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22 Vic. cap. 19; 27 & 28 Vic.
22 Vic. cap. 22, secs. 2

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WITH FULL REFERENCE

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COPP, CLARK &

GENERAL

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RULES AND ORDERS

FOR REGULATING THE

PRACTICE OF THE DIVISION COURTS

IN

ONTARIO,

AND

FORMS OF PROCEEDINGS THEREIN;

UNDER THE PROVISIONS OF SEVERAL STATUTES:

22 Vic. cap. 19; 27 & 28 Vic. cap. 27; 32 Vic. cap. 23; 22 Vic. cap. 29; 23 Vic. cap. 45
22 Vic. cap. 22, secs. 292 *et seq.*; 22 Vic. cap. 57; 32 Vic. cap. 36, secs. 63
et seq.; 27 & 28 Vic. cap. 5.)

FRAMED BY THE BOARD OF COUNTY JUDGES,

AND PROMULGATED 1ST JULY, 1860.

WITH FULL REFERENCES TO THE DIVISION COURTS ACTS AND TO THE
RULES AND FORMS, &c.

BY HENRY O'BRIEN, ESQ.,

Barrister-at-law.

TORONTO:

COPP, CLARK & CO., PRINTERS, KING STREET EAST.

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INTRODUCTION.

The Rules and Forms as promulgated by the Board of County Judges in no marginal references, and a few mistakes crept into the Edition it was printed from the matter prepared by the Judges. To remedy these and to give completeness to the work as a Manual of Division Court Law, and to secure uniformity with the previous part, the Editor has inserted full and appropriate cross references in the margin opposite the different sections, rules and forms.

The reader will notice that the Rules and Forms now published are of size and shape similar to that of the former work of the Editor, and the paging runs on continuously throughout. This will be found convenient, and was intended to enable both to be bound together as one volume, which will then give the whole law affecting Division Courts in a convenient and uniform style.

The References to Rules and to Forms which appear in the margin, except when not otherwise specially denoted, are always, to the last Rules and Forms of July, 1869.

To ascertain to what Statute the Sections referred to in the margin belong, the reader must turn to the page appended to the reference, which will give the desired information.

The very full and complete Index which completes this addition to the "Division Courts Acts and Rules," has been prepared by Mr. Kains, Barrister, St. Thomas, under the supervision of the Editor. It embraces everything since the former Index, and with that forms a complete key to the whole work.

In conclusion, the Editor desires gratefully to acknowledge the very great assistance he has received from two members of the Board of County Judges in the preparation of the references.

TORONTO, April, 1870.

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PREAMBLE

TO

GENERAL RULES OF 1ST JULY, 1869.

PROVINCE OF ONTARIO.

By the Division Courts Act, it is enacted that the Governor may appoint and authorize five of the County Judges, from time to time, to frame General Rules and Forms concerning the practice and proceedings of the said Division Courts, and the execution of the process of such Courts, and with power also to frame rules and orders in relation to any of the provisions of the said Act, or of any future Act respecting such Courts, as to which doubts have arisen or may arise, or as to which there have been or may be conflicting decisions in any of such Courts; that the County Judges so appointed, or any three of them, shall, under their hands, certify to the Chief Justice of Upper Canada all rules and forms by them made, and that the Chief Justice shall submit the same to the Judges of the Superior Courts of Common Law, at Toronto, or to any four of them, and that the Judges of the Superior Courts (of whom the Chief Justice, or the Chief Justice of the Court of Common Pleas shall be one) may approve of, disallow or amend any such rules or forms, and that the rules and forms so approved of shall have the same force and effect as if they had been made and included in the said Division Courts Act.

And whereas by the Act of the Legislature of this Province, passed in the 32nd year of Her Majesty's reign, intituled "An Act to amend the Acts respect-

ing Division Courts," it is enacted that the County Judges so to be appointed as aforesaid, shall be styled "The Board of County Judges," and shall have authority from time to time, in addition to their present powers, to make rules also for the guidance of Clerks and Bailiffs, and in relation to the duties and services to be performed, and to the fees to be received by them; and that the said Board may, from time to time, alter or amend any rules or orders made for said Courts.

And whereas the Lieutenant Governor of this Province, in exercise of the power so given to him, on the 24th day of March last, appointed James Robert Gowan, Stephen James Jones, David John Hughes, James Daniell, and James Smith, five of the County Judges of this Province, to frame new general rules and forms concerning the practice and proceedings of the Division Courts and the execution of the process of such Courts, and also to frame new rules and orders in relation to the Division Courts Act, and any subsequent Act or Acts respecting such Courts, as to which doubts have arisen or may arise, or as to which there have been or may be conflicting decisions in any of such Courts, and also to make rules for the guidance of Clerks and Bailiffs, and in relation to the duties and services to be performed, and to the fees to be received by them.

Now, in pursuance of the powers vested in us, we, the said James Robert Gowan, Stephen James Jones, David John Hughes, James Daniell, and James Smith, have framed the following rules, orders and forms for use in the said Courts, and to be in force until otherwise ordered as aforesaid, and we do certify the same to the Honorable the Chief Justice of Upper Canada accordingly.

TORONTO, 1869.

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RULES.

TIME OF OPERATION.

1. The Rules of Practice and the Forms now in use in the several Division Courts shall, on and from the second day of August, A. D. 1869, cease to be used, and in lieu thereof, the following shall, on and from such day, be the Rules, Orders and Forms in force and used in said Courts. But any action, process, order, judgment, or proceeding, pending, existing, or in force in any Division Court at that time, shall not be thereby affected, but shall continue and remain, and so far as necessary be proceeded with under these rules and forms, if applicable; or otherwise under the rules and forms hitherto in use, or as the Judge may direct.

From 1st
Aug., 1869.
See sec. 2,
p. 1, and sec.
70, p. 84.

INTERPRETATION.

2. In construing these Rules and Forms, unless otherwise declared or indicated by the context, the following words shall have the several meanings hereby assigned them over and above their several ordinary meanings, viz. :—(1st) The words "the Act" shall mean the Division Courts Act (Consolidated Statutes of Upper Canada, chapter 19); and the words "the Act of 1869" shall mean the 32nd Vic., Cap. 23, "An Act to amend the Acts respecting Division Courts;" (2) The word "party" shall mean a party "Party" to a suit or proceeding; (3) The word "person" "Person" shall mean any person, whether a party to a suit or proceeding or not; (4) The words "person" or "Person" or "party" shall include, and be understood to mean a "party" body politic or corporate, as well as an individual; (5) The word "executor" shall be held to embrace and "Executor" mean "of the last will and testament," and extend to parties acting as such of their own wrong; (6)

Words:
"The Act,"
"The Act of
1869."

"Administrator."

Singular and plural.

Gender.

"Sworn,"
"on oath."

"Home
Court,"
"Home
Division,"
"Foreign
Court,"
"Foreign
Division,"
"Judge,"
"Clerk."

"Plaintiff,"
"Defend-
ant."

"County."

"The claim."

"Process."

"United
Counties."

The word "administrator" shall be held to embrace and express "of the goods and chattels, rights and credits which were, &c.;" (7) Every word importing the singular number shall, where necessary, be understood to mean several persons or things, as well as one person or thing; (8) Every word importing the masculine gender shall, where necessary, be understood to mean a female as well as a male; (9) The word "sworn," and the words "on oath," shall be understood to mean affirmed or on oath *viva voce*, or by affidavit or affirmation; (10) The words "Home Court" and "Home Division" shall mean respectively the Court and Division from which process originally issued; (11) The words "Foreign Court" and "Foreign Division" shall mean respectively the Court and Division into which process is issued from another Court; (12) The words "Judge" and "Clerk" respectively shall be taken to extend and be applied to the Junior, Deputy, or Acting Judge, or Deputy Clerk (as the case may be or require); (13) The words "Plaintiff" and "Defendant" respectively shall be mutually transposed, where necessary, for the proper application and construction of any of these Rules or the Forms herewith, or for giving effect thereto; (14) The word "County" shall include any two or more Counties united for judicial purposes; (15) The words "the claim" shall mean the demand or the subject matter for which any suit or proceeding is brought or instituted in a Division Court; (16) The word "process" shall mean any summons, writ, or warrant issued under the seal of the Court, or Judge's summons or order. (17) In any form or proceeding, the words "United Counties" shall be introduced according to law, and circumstances rendering the same necessary.

CLAIM AND PARTICULARS.

3. Every claim should shew the names in full, and the present or last known places of abode of the parties, and must be written in a legible manner, and delivered to the Clerk, at his office; provided

that if the Plaintiff is unacquainted with the Defendant's christian name, the Defendant may be described by his surname, or by his surname and the initials of his christian name, or by such name as he is generally known by: and the Defendant may be so described in the process, and the same may be taken to be as valid as if the true christian name and surname had been stated therein; and all subsequent proceedings thereon may be taken in conformity with such description; or, when the Defendant's true name is discovered, the proceedings may be amended accordingly, on such terms as the Judge thinks fit.

See secs. 85,
p. 14, and
74, p. 39
Forms 16 to
21.

See "Amend-
ments" post
pp. 338, 339.

4. The claim shall, in every case admitting thereof, shew the particulars in detail; and, in other cases, shall contain a statement of the particulars of the claim, or the facts constituting the cause of action, in ordinary and concise language, and the sum or sums of money claimed in respect thereto: (The Forms 15 to 21 are given by way of illustration) but in all cases the Judge, in his discretion, and on such terms as he thinks fit, may adjourn the hearing for a statement of the particulars or further particulars.

See secs. 85,
p. 14, and 74,
p. 39, Forms
15 to 21.

5. Where a Plaintiff sues a Defendant, under the provisions of the Act 27 and 28 Vic. cap. 27, the claim shall contain the following statement: "And the Plaintiff enters this suit, and claims to have it tried and determined in this Court, because the place of sitting thereof is the nearest to the Defendant's residence."

See secs. in-
serted after
71, pp. 36 to
38, and Form
of Execution
80.

6. In all actions in Division Courts against officers and their sureties (under the 25th and subsequent sections of the Act), on the officers' Security Covenant, the particulars of the claim shall be according to the Form 18. The process and subsequent proceedings to be the same as in ordinary cases.

See secs. 24,
25, 26, 27,
28, 29, pp.
10 to 13, and
Form 18.

7. Where a party, having an unsatisfied judgment, desires to proceed under the 160th and subsequent sections of the Act, he shall enter with the Clerk a minute in writing according to the Form 27, or to the like effect, which shall be numbered in the order

See pages 78
to 84, and
Forms 27 &
28.

See Rules
100 to 103.

in which it shall be received; and if he proceeds in a Division Court other than the one in which the judgment was entered, he shall, with the minute, deliver to the Clerk a transcript of the judgment; and thereupon a summons (Form 28) bearing the number of the minute shall issue.

See sec. 59,
note (b), p. 30,
and sec. 265,
p. 103.

8. Where the excess is abandoned, it must be done, in the first instance, on the claim. *62. 14. 323.*

See secs. 34,
p. 14, and 74,
p. 39.

PROCESS.

9. All first process issued under the seal of the Court shall be signed by the Clerk, dated the day on which the claim is entered, and numbered to correspond with the claim on which it issues, and, with the exception of Warrants of Attachment, duly stamped.

Sec. 74, p.
39.

10. The first process issued in a suit under the seal of the Court shall for all purposes be held to be the commencement of the action.

11. The first process for the recovery of a debt or money demand, or for a tort or other personal action, may be a summons and called "ordinary summons" (Form 22).

See page 276
and notes (c)
and (cc); p.
88, note (w).

12. In actions for the recovery of a debt or money demand, where the particulars of the Plaintiff's claim are given with reasonable certainty and detail (under the Act of 1869,) the first process may be a summons, and called "special summons," and may be in the Form 23 set forth in the Schedule; and the Warning No. 1 therein shall stand in lieu of the Form A in the Schedule in the last mentioned Act.

See secs. 34,
p. 14, and 74,
p. 39.

13. In actions of Replevin, the first process shall be a writ of Replevin and Summons called "Summons in Replevin" (Form 24).

See p. 75.
note (c).

14. An alias or pluries process shall be dated on the day on which it actually issues.

15. Where the Plaintiff sues under the 152nd section of the Act, the proceeding shall be by "ordinary summons" or "special summons," but in addition to the notice or notices and warnings on the original summons to appear there shall be added the

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following: "The Defendant is informed and cautioned that I—K—(insert the name of the beneficial plaintiff) only has power to discharge this suit, the subject matter thereof having been seized under execution."

16. Leave to issue a summons or process under See p. 38,
the 72nd section of the Act may be granted at any and Rule
time by the Judge, on production of an affidavit, 123.
(Forms 8 or 9), or upon oath to the same effect, at
any sittings of the Court, in which the action is to
be brought; and where a summons issues by leave
of the Judge, no written order for such leave shall
be necessary, but it shall be sufficient to insert in the
summons "Issued by leave of the Judge."

17. When there are more Defendants than one, New.
and they reside in different counties, concurrent
summons may issue for the service of the Defendants
residing out of the county in which the action
is brought, but the costs only of the summons actually
served shall be allowed on taxation, unless the Judge
directs otherwise; and such concurrent summons
shall correspond with the original, and be marked in
the margin "concurrent summons."

SPECIAL SUMMONS.

18. Every "Special Summons" shall be returnable on the eleventh day after the day of service See Form 23.
thereof upon the Defendant, in case the Defendant, See secs. 75,
or one of the Defendants, resides in the County in 76, 77, & 79,
which the action is brought; in case none of the pp. 40, 41,
Defendants reside in the County, but one of them and Act of
resides in an adjoining County, the Special Summons 1869, p. 276,
shall be returnable on the sixteenth day after the and notes.
day of such service; and in case none of the Defendants reside in the County within which the action is brought, nor in an adjoining County, the Special Summons shall be returnable on the twenty-first day after the day of such service upon the defendants.

19. In case a "Special Summons" shall not be See Form 23.
served in time to make the notice of the sittings of
the Court at the foot of "Warning No. 2" available

for the information of the Defendant, the Bailiff shall return the same forthwith to the Clerk who issued the summons, and the Clerk shall add a new notice of the proper days of the week and month on which the two next sittings of the Court are to be held, and shall return or transmit the same to the Bailiff for service.

See pp. 276,
277, note (a).

See Form
102 (3rd).

20. A Defendant giving notice of set-off or other statutory defence, or paying money into Court, or pleading a tender, shall be deemed to have sufficiently given the Clerk notice of disputing the Plaintiff's claim within the meaning of the Act of 1869.

21. When the Defendant's notice of defence disputes the claim in part only, the Clerk shall in the manner provided for in Rule 88, forthwith notify the Plaintiff thereof, and require him forthwith to say in writing, if he is willing to take judgment for such part; and if the Plaintiff fails to notify the Clerk that he is content to take judgment for the part admitted, it will be assumed that he seeks to recover the whole claim, and in such case the Plaintiff must proceed to trial as in ordinary cases.

22. In case there are several Defendants, and all of them have not been served with a special summons, then unless the Plaintiff is content to take judgment against those served only, judgment cannot be entered on his behalf under the said Act, but the Plaintiff will have to proceed to a hearing before the Judge as in ordinary cases.

23. In case the notice required by the second section of the Act of 1869 has not been given by a sole Defendant, or by one or more of several Defendants, (and the Plaintiff is willing to take judgment against those only,) and leave to dispute the Plaintiff's claim has not been given by the Judge, the Clerk, after receiving a return of the "special summons," with the proper affidavit of service may, on the twelfth day after the service of the summons, where the return day is the eleventh day after service, and on the seventeenth and twenty-second days respectively, where the sixteenth and twenty-first

See secs. 75,
76, 77, 79,
pp. 40, 41,
and sec. 2,
p. 276, and
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days after the day of service are the return days of such summons, or at any time within one month after such return day, enter judgment against the Defendant or Defendants so served as aforesaid, for the claim, or so much thereof as has not been disputed, if the Plaintiff is content with judgment for such part. If the Plaintiff is not content to take judgment for the part not disputed, he must proceed to trial, as in ordinary cases, and the part of such claim not disputed, shall be considered as admitted and confessed by the Defendant or Defendants.

24. In case a sole Defendant, or some one or more See page
276, note (d). of several Defendants served with a "special summons," has or have given the necessary notice of defence required by the Statute, and the Plaintiff is not willing to take judgment against those Defendants only who have made default, the action shall thereafter be proceeded with as in ordinary cases, and the default of those Defendants (if any there be,) Secs. 2 and 4,
notes (g & h),
p. 278. who have not given the notice at the time limited (unless the Judge gives them leave to put in such notice afterwards,) shall be considered as against them, a confession of the Plaintiff's claim.

26. In actions commenced by special summons where there are more Defendants than one, and some of them have been served with process, but have not given any notice disputing the Plaintiff's claim, and other or others of them have not been served, but have given a confession of the debt, the Clerk shall produce or transmit the confession duly proved to the Judge for his order, and when the For n 53. Judge's order shall be procured, the Clerk may enter judgment therein within one month after the return of the summons against all the Defendants for the amounts claimed in the particulars, or so much thereof as has not been disputed (if the Plaintiff is content with judgment for part,) provided that the Defendants who have confessed shall have acknowledged the same amount by their confession, and such judgment may be in the form 53, and it shall not be in the power of the Plaintiff to elect either to proceed on the confession against some of the Defen- More than
one defen-
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dants, or to obtain final judgment against those Defendants who have not confessed, but the judgment shall be entered against all the Defendants jointly.

27. In any action brought against two or more Defendants by "Special Summons," and all such Defendants are not served on the same day, the Clerk, if no notice of defence is entered by such Defendant or Defendants as are first served, may on the day he could have entered final judgment against such Defendants, if they had been all served, enter a minute in the Procedure Book, stating the fact of service, and of no defence, and the Clerk may so proceed against each Defendant as the time falls due, until the last is served, when if he does not put in the necessary notice of defence in the proper time, final judgment may be signed against all; but if it is not desired to enter judgment against one of the several Defendants till all have been served, no such minute need be made.

28. If one or more not being all of such Defendants, put in the necessary notice, the action shall proceed as in other cases, the Clerk, (unless the Plaintiff wishes to abandon those who defend) not signing judgment against those who have been minuted, as aforesaid, until the action against all is determined, so as to have but one taxation of costs. When the case is tried, if a judgment be given for the Plaintiff against those Defendants who dispute the claim, the Clerk may enter final judgment against all the Defendants; if at such trial a judgment be given for those Defendants, or any of them that dispute the Plaintiff's claim, the Plaintiff if not intending to make a motion to have the said judgment reversed or altered, must obtain leave to amend his proceedings by striking out the names of those Defendants in whose favor judgment at the trial was given, and final judgment may be then entered against those who have been minuted as above and against any Defendant against whom judgment at such trial was given.

29. Any Defendant who has been minuted as aforesaid, may be let in to defend on sufficient

See 2,
page 273,
note (99.)

Section 4,
page 278.

against those Defendants jointly. At two or more and all such same day, the entered by such served, may on judgment against served, entering the fact of Clerk may so time falls due, does not put in proper time, all; but if it is one of the served, no such

such Defendant shall (unless the defend) not have been against all is action of costs. be given for who dispute judgment against judgment be rem that did not intend judgment to amend his es of those the trial was then entered above and judgment at minuted as sufficient

grounds shown to the Judge as in any ordinary case of judgment entered in default of the necessary notice.

80. In case the Defendant has given a confession or acknowledgment of debt, and has not put in the notice disputing the Plaintiff's claim, the Plaintiff may either proceed on the confession as in ordinary cases, or may obtain final judgment under the Act of 1869, as he may elect. The costs and disbursements of transmitting such confession to the Judge to obtain the order for entering of judgment, shall be costs in the cause.

See sec. 3,
page 277,
note (c).

81. In case judgment be not entered by default, on a special summons, within one month after the return of the summons, the Clerk cannot enter it afterwards; but the suit shall not thereby abate or be considered as discontinued, but the plaintiff may continue and revive the same at his own expense by suing out an *alias* summons in the ordinary form of summons to appear (Form 22), with the same particulars attached or endorsed as were attached to or endorsed on the "Special Summons," which shall be duly served upon the Defendant in the usual way, and the suit may then proceed as in ordinary cases.

See sec. 2,
page 277,
note (c).
Form 22.

82. The judgment shall be entered by the Clerk in the Procedure Book, according to the form to these rules appended (No. 52), in lieu of the "Form B" in the Schedule to the Act of 1869.

83. The execution to be issued on a judgment under the second section of the said Act shall be in the form set forth in the schedule of forms to these rules, No. 77.

84. Where, under the provisions of sec. 18, of the Act of 1869, a writ of execution is required to be executed out of the Division, the writ may be directed by name of office to the Bailiff of any of the Division Courts in the same County, but cannot be issued to the Bailiff in another County. The returns required to be made under secs. 18 and 19, must be made to the Clerk by whom the process or document has been issued.

See page 201
note (p).

ATTACHMENTS.

See sec. 199,
page 99.
See Form 11
e.c.s. 204,
211 and 207,
page 106,
note (p).

35. The form of affidavit for an attachment shall be according to the Form 11. In all cases where an attachment shall issue, (whether the suit be commenced by attachment in the first instance or not), and the summons against the Defendant shall not be personally served, the hearing or trial shall not take place until a month after the seizure under the attachment.

New.

36. When several persons sue out warrants of attachment against an absconding, removing or concealed debtor, each one of such attaching creditors may enter a defence, call and examine, and cross-examine witnesses as to any debt or claim proved or attempted to be proved against the debtor, in the same way and to the same extent as the debtor himself might do were he personally to appear and defend the suit on any ground whatever.

INTERPLEADER.

See sec. 175,
page 85, and
notes (x) (a)
(b) (c), and
section 26,
page 293,
note (u).

See secs. 75,
76, 77, p. 40.

See Forms
20 and 21.

37. When any claim shall be made to, or in respect to, any goods or chattels, property or security, taken in execution, or attached under the process of any Division Court, or the proceeds or value thereof, by any landlord for rent, or by any person, not being the party against whom such process has issued, and summonses have been issued on the application of the officer charged with the execution of such process, such summonses shall be served in such time and manner as is directed for service of an ordinary summons to appear; and the case shall proceed as if the claimant were the Plaintiff, and the execution or attaching creditor were the Defendant.

38. The claimant shall, not less than six days before the day appointed for the trial, leave at the office of the Clerk of the Court, a particular of any goods or chattels, property or security, alleged to be the property of the claimant, and the grounds of his claim, set forth in ordinary and concise language; or, in case of a claim for rent, the amount thereof, for what period, in respect to what premises the same

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is claimed to be due, and the terms of holding: and
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Clerk until the claim shall be adjudicated upon;
provided that, by consent, an interpleader claim may
be tried, although these rules may not have been
complied with: and the summonses, the particulars,
and the order thereon, shall be according to the
Forms given or to the like effect.

See Forms
25, 26, 71 &
91.

39. In case the claimant shall not have complied ^{See Rule 88.} with the rule in respect of delivering a particular of his claim, the Judge may, upon such terms as he shall direct, order the trial and proceedings to be adjourned, so as to enable him fully to adjudicate upon the claim on the merits.

40. Where the claim to any goods or chattels, ^{New.} property or security, taken in execution or attached, or the proceeds or value thereof, shall be dismissed, the costs of the Bailiff shall be allowed to him out of the amount levied, unless the Judge shall otherwise order.

REPLEVIN.

41. In actions of replevin no other cause of action <sup>See pp. 201
and 207, and
Forms 15,
and 24.</sup> shall be joined in the summons.

42. Where the distress is for rent, and the Defendant succeeds in the action, if the Defendant requires, the Judge shall find the value of the goods distrained, and if the value be less than the amount of rent in arrear, judgment shall be given for the amount of such value; but if the amount of the rent in arrear be less than the value so found, judgment shall be given for the amount of such rent, and may be enforced in the same manner as any other judgment of the Court.

See Statute
13 Car. 2, c.
7, s. 2.

43. Where the distress is for *damage feasant*, and the Defendant is entitled to judgment for the return, if the Plaintiff requires, the Judge shall find the amount of the damages sustained by the Defendant, and judgment shall be given in favor of the Defendant in the alternative for a return, or for the amount of the damages so found.

See Statute
21 Hen. 8, c.
19.

See Forms
70 and 85.

See p. 46, &
sec. 7, p. 210,
and Rule
130.

See Forms
117 and 118,
and see Sec.
8, page 204,
note (c), and
sec. 6, p. 200.

See sec. 7,
page 203, &
note (d).

See sec. 6,
page 208.

See sec. 11,
page 205,
note (g) and
Form 119.

44. In any other action of replevin, the judgment for the Defendant shall be for a return of the goods replevied with the costs of suit, together with such damages as the Defendant shall sustain by the issuing of the writ of replevin, if damages are awarded.

45. In case the Defendant in an action of replevin shall pay damages and costs into Court, under the 90th section of the Act, and shall leave with the Clerk a consent that the replevin bond be delivered up to be cancelled, and an express waiver of all right to the property replevied, and the Plaintiff accept such damages, the proceedings in the said action of replevin shall thenceforth cease and be discontinued.

46. Before the bailiff replevies, he shall take a bond in treble the value of the property to be replevied, as stated in the writ, which bond shall be assignable to the Defendant, and the bond and assignment thereof may be in the form given, the condition being varied to correspond with the writ.

47. The copy of the "Summons in Replovin" shall not be served upon the Defendant, until the bailiff has replevied the property, or some part of it, if he cannot replevy the whole in consequence of the Defendant having elogned the same out of the County in which he is Bailiff, or because the same is not in the possession of the Defendant, or of any other person for him.

48. A copy of the "Summons in Repleven" shall be served on the Defendant personally, or if he cannot be found, by leaving the copy at his usual or last place of abode, with his wife, or some other grown person being a member of his household, or an inmate of the house wherein he resided as aforesaid.

49. The Bailiff shall return the "Summons in Repleven" at or before the return day thereof, and shall annex thereto:—

a. The names of the sureties in and the date of the bond taken from the Plaintiff, and the name or names of the witnesses thereto.

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b. The place of residence and additions of the sureties.

c. The number, quantity and quality of the articles of property replevied, and in case he has replevied only a portion of the property mentioned in the summons, and cannot replevy the residue, by reason of the same having been eloigned out of the County by the Defendant, or not being in the possession of the Defendant, or of any other person for him, he shall state in his return the articles which he cannot replevy, and the reason why not. (Form 119.)

See Form
119.

50. If the Bailiff makes such a return of the property distrained, taken or detained, having been eloigned, then upon the filing of such return, a writ in Withernam (Con. Stat. U. C., cap. 29), shall be issued by the Clerk, who issued the summons in replevin, and before executing such writ, the Bailiff shall take pledges (sureties) in like manner as in cases of distress.

See sec. 29,
p. 207, and
Form in
Con. Stat.
U. C., page
331.

GARNISHEE PROCEEDINGS.

51. The affidavit (Form 40), required by sec. 6, of the Act of 1869, shall be made by the Primary Creditor, his attorney or agent, and should state (in addition to the facts required by that section) the nature of the debt sought to be garnished, and the amount thereof, if known to the applicant; and the application to the Judge may be *ex parte*.

See sec. 6,
page 281, &
notes (v) (v),
&c., and
for Forms
setting forth
nature of
debt, see
Form 11 and
page 146,
note (b).

52. The warning (Form 42), shall be endorsed on or subjoined to the attaching order issued under sec. 6, sub-sec. 1, and on the summons referred to in sec. 6, sub-sec. 4, and sec. 7, sub-sec. 1.

See page 281
and notes,
page 285 and
notes.

53. The service of the summons on the Garnishee shall in all cases be made at least ten days before the return thereof, and the service on the Primary Debtor or Debtors, ten, fifteen, or twenty days (according to the places of residence of the parties to be served), before the return thereof. If the amount of the Primary Creditor's claim exceed eight dollars, the service must be personal, unless the Judge order otherwise; if such claim does not exceed eight dol-

See sub-sec.
5, page 284
note (c), and
Secs. 75, 76,
and 77, p. 10.

lars, the service may be personal, or on some grown up person being an inmate of the dwelling or usual place of abode, trading or dealing of the person requiring to be served.

See sec. 6,
sub-sec. 5, p.
284, notes
(b), (c) and
p. 287, note
(i).

See sub-sec.
5, page 284,
note (c).

See sub-sec.
6, page 284,
and sub-sec.
8, page 286.

See pp. 283
and 284, note
(b), and sec.
8, p. 287, and
Rules 161,
162, 163.

See sub-secs
8 and 4, p.
283, note (a).

See pp. 288,
289, and
note (i), p.
287.

54. The Primary Debtor shall in all cases, unless dispensed with by the Judge, be served with every garnishee summons, and if not served, the Judge may, on such terms as to him may seem meet, adjourn the case until such service be effected, and may also order any other person to be made a party to such suit, and to be served with such summons.

55. The Judge, in any such garnishee proceeding, may order that the service need not be personal, but may be made on any person or persons to be named in the order, or in such other manner as the Judge may direct.

56. If the Garnishee or the Primary Debtor having been served does not appear on the return of such summons, judgment may be given against him by default, and if only some of the parties required to be served are served, the Judge may give the same judgment against those served as in ordinary cases.

57. Where the summons, under sec. 6, sub-section 4, is to be issued from any Court other than that in which the Primary Creditor has obtained judgment against the Primary Debtor, a transcript of such judgment shall be filed with the Clerk of such first mentioned Court, previous to the issuing of the summons against the Garnishee.

58. No payment shall be made by a Garnishee to a Primary Creditor before judgment given against the Primary Debtor, except an order for that purpose be first obtained from the Judge.

59. The application under section 14 must be by summons obtained from the Judge, returnable at any time and place the Judge may appoint, and calling upon the Garnishee, Primary Creditor, or such other person or persons as the Judge in his discretion shall think fit. If the money has been paid over, the Primary Creditor or other person may be called upon

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or on some ground by the summons, changing the form to suit, to shew cause why he should not pay the money to the Primary Debtor or other person applying. The order, if granted, may be in accordance with the summons, and may be granted if parties summoned make default, or otherwise, as in ordinary Chamber applications in the Superior Courts.

60. The bond to be given under section 15, shall be executed by the Primary Creditor, or his agent, with one sufficient surety in double the amount of the debt ordered to be paid by the Garnishee, and shall be an ordinary bond to the Clerk, by his name of office, conditioned for the re-payment of the money in case re-payment be ordered, and such bond shall be approved of by the Clerk. (Form 47.)

See page 289
and note (m)
and Form
47 a.

61. In addition to any costs that may be awarded against a Garnishee under the 11th section, if the Primary Creditor is obliged to issue execution against him, the costs of such execution and the bailiff's fees thereon may be also levied of the Garnishee.

See page 288.

62. The forms subjoined to these Rules for garnishee proceedings shall be in lieu of the forms for like proceedings in the schedule of the Act of 1869, and the entry in the debt attachment book shall commence when the attaching order or garnishee summons, as the case may be, first issues, and each subsequent proceeding shall be entered therein when taken.

See Forms 6,
40, 41, 42, 43,
44, 45, 46, 47,
47 (a), 86, 87,
88, 89.

63. In the proceedings against Garnishees under the Common Law Procedure Act, sections 292 to 296 inclusive, the forms 48, 49, 50, 90, may be used; and the same proceedings may be taken in the Division Court against the Garnishee as provided in the Act of 1869, and in these Rules and Forms, made under the said Act, as far as applicable.

See secs.
292, 293, 294,
295, 296, on
pp. 215 to
217 inclu-
sive, and pp.
296 to 299
inclusive.

PROCEEDINGS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

64. A party suing an executor or administrator, may charge in the summons, in the Form 32, that the Defendant has assets, and has wasted them.

See sec. 57,
pp. 28, 29,
note (i), and
Form 32.

See forms of
summons 31
and 32, also
minute of
judgment,
Forms 60
and 67.

65. In all cases, if the Court shall be of the opinion that the Defendant has wasted the assets, the judgment shall be, that the debt or damages, and costs shall be levied *de bonis testatoris si, &c., et si non, de bonis propriis*; and the non-payment of the amount of the demand immediately, on the Court finding such demand to be correct, and that the Defendant is chargeable in respect of assets, shall be conclusive evidence of wasting, as the amount with which he is so chargeable.

See Forms
61, 83, 84.

66. Where an executor or administrator denies his representative character, or alleges a release to himself of the demand, whether he insists on any other ground of defence or not, and the judgment of the Court is in favor of the Plaintiff, it shall be, that the amount found to be due, and costs, shall be levied *de bonis testatoris, &c., et, si non, de bonis propriis*.

See Forms
62, 83, 84.

67. Where an executor or administrator admits his representative character, and only denies the demand, if the Plaintiff prove it, the judgment shall be, that the demand and costs shall be levied *de bonis testatoris, &c., et, si non, as to costs, de bonis propriis*.

See Forms
63, 83, 84.

68. Where the Defendant admits his representative character, but denies the demand, and alleges a total or partial administration of the assets, and the Plaintiff proves his demand, and the Defendant proves the administration alleged, the judgment shall be, to levy the costs of proving the demand *de bonis testatoris, &c., et, si non, de bonis propriis*; and as to the whole or residue of the demand, judgment of *ad quod acciderint*; and the Plaintiff shall pay the Defendant's costs of proving the administration.

See Forms
64, 83, 84.

69. Where the Defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the Plaintiff proves his demand, but the Defendant does not prove the administration alleged, the judgment shall be, to levy the amount of the demand, if such amount of assets is shown to have come to the hands of the Defendant, or such amount as is shown to have come

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the assets, the expenses, and *de bonis propriis*, *et si non* as to the costs, *de bonis testatoris*; and as to the residue of the demand, if any, judgment of assets, *quando acciderint*.

70. Where the Defendant admits his representative character and the Plaintiff's demand, but alleges a total or partial administration of the assets, and proves the administration alleged, the judgment shall be for assets, *quando acciderint*, and the Plaintiff shall pay the Defendant's costs of proving the administration of assets.

See Forms
65, 66, 84.

71. Where a Defendant admits his representative character and the Plaintiff's demand, but alleges a total or partial administration of the assets but does not prove the administration alleged, the judgment shall be, to levy the amount of the demand, if so much assets is shown to have come to the Defendant's hands, or so much as is shown to have come to them, and costs *de bonis testatoris si, &c., et si non*, as to the costs, *de bonis propriis*; and as to the residue of the demand, if any, judgment of assets, *quando acciderint*.

See Forms
66, 88, 84.

72. Where judgment has been given against an executor or administrator, that the amount be levied upon assets of the deceased, *quando acciderint*, the Plaintiff, or his personal representative, may issue a summons (Form 34); and if it shall appear, that assets have come to the hands of the executor or administrator since the judgment, the Court may order that the debt, damages, and costs be levied *de bonis testatoris si, &c., et si non*, as to the costs, *de bonis propriis*: provided, that it shall be competent for the party applying, to charge in the summons, that the executor or administrator has wasted the assets of the testator or intestate, in the same manner as in Rule 64; and the provisions of Rule 65 shall apply to such enquiry: and the Court may, if it appears that the party charged has wasted the assets, direct a levy to be made, as to the debt and costs, *de bonis testatoris, &c., et, si non, de bonis propriis*.

See Form 67.

73. Where a Defendant admits his representative character and the Plaintiff's demand, and that he is chargeable with any sum in respect of assets, he shall pay such sum into Court subject to the rules relating to payment into Court in other cases.

See sec. 90,
page 46, and
Rule 20.

See Form 59.

74. In actions against executors and administrators, for which provision is not hereinbefore specially made, if the Defendant fails as to any of his defences, the judgment shall be for the Plaintiff, as to his costs of disproving such defence, and such costs shall be levied *de bonis testatoris si, &c., et, si non de bonis propriis.*

See Forms
54 to 58 in-
clusive.

75. In actions by executors or administrators, if the Plaintiff fail, the costs shall, unless the Court shall otherwise order, be awarded in favour of the Defendant, and shall be levied *de bonis propriis.*

CLERKS' AND BAILIFFS' DUTIES.

See secs. 33,
34, etc., pp.
13 and 14,
and note (g);
see also sec.
23, p. 293.
See Sec. 36,
p. 14; sec.
42, page 16,
note (q); sec.
139, pp. 66,
67 and notes

Also see sec.
40, p. 16, and
sec. 20, page
202, note
(pp), and
Forms 4, 5, 6.

See sec. 74,
p. 39, and
Forms 18 to
19.

76. The Clerk of every Division Court shall have an office at such place, within the Division for which he is Clerk, as the Judge shall direct.

77. The following books shall be kept by the Clerk, and the necessary entries fairly made therein, namely: 1st, a book to be called "the Procedure Book," in which shall be entered a note of all Process issued, and of all orders, judgments, decrees, transcripts received, warrants, executions, and returns thereto, and of all other proceedings in every cause and at every Court; 2nd, a book to be called the "Cash Book," in which shall be entered an account of all suitors' moneys paid into and out of Court; and 3rd, a "Debt Attachment Book," which books shall be according to the Forms 4, 5, 6, and kept, as nearly as may be, in the manner shown in the Forms.

78. The Clerk shall number every claim in the order in which it is received by him: the numbering to show the standing of the suit, in respect to the whole number of suits entered in the Court for the then current year.

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79. In any case where the proceeding by Special Summons is warranted it shall be adopted by the Clerk unless otherwise ordered by the Plaintiff.

See sec. 2,
page 276,
notes (b), (c).

80. The Clerk shall annex to every summons (whether original, alias, pluries, or renewed) the copy of claim, entered with him according to the 3rd Rule; and to each copy of summons to be served, shall be likewise annexed a copy of such claim; and the Clerk shall, without delay, issue the same for service.

See also
secs. 35, p.
14, and 74,
p. 39.

81. In case process is required to be served in a "Foreign Division" and the Plaintiff does not elect, and the Judge or Clerk does not make any order as to how it shall be served, it may be transmitted by mail, by the Clerk issuing the same, (on receiving the necessary postage and fees) to the Clerk of the division where the same is required to be served; and such last mentioned Clerk shall forthwith deliver such summons, or other process, to the Bailiff of his division, to be executed; and such Bailiff shall serve the same, and forthwith make return thereof to the Clerk of his Court, in the manner required by the 90th Rule, and such last mentioned Clerk, on return made, shall forthwith transmit the papers, by mail, with the necessary affidavits of service, if effected, or if service is not effected, with the proper return to the first mentioned Clerk.

See sec. 73,
page 38, and
secs. 78 and
79, p. 41,
notes (c) (d),
sec. 18, page
291, and note
(p).

82. Every ordinary summons must be served ten, fifteen or twenty days (according to the residence of the Defendant) before the holding of the Court at which it is returnable, (neither the day of service nor the day of holding the Court to be counted), and where any such summons has not been served, another summons, or successive summonses, may be issued.

Secs. 75, 76,
77, pp. 40 et
seq.

83. The returns required to be made by Clerks under the 41st Section of the Act, shall be according to the Form 115, and shall be made immediately after the 30th day of June and the 31st day of December, in each year, without any special order from the Judge.

Sec. 41, p. 16,
Form 115.

Sec. 43, p. 17,
Form 116.

84. The list of unclaimed moneys, required by the 43rd section of the Act, shall be made under oath according to the Form, and shall, in the month of January in each year, be transmitted by the Clerk, together with the moneys (if any) therein mentioned, to the County Crown Attorney, and if no money remains unclaimed, the fact shall be stated in the affidavit.

Sec. 160, pp.
78, 79, 80,
notes (k), (l),
Form 28, and
Rule 7.

85. The summons, under the 160th section of the Act, may be served by delivering to the Defendant a copy thereof, and shall be served ten days at least before the day on which the party is required to appear; but the service of such summons at any time before the day appointed for the appearance of such party may be deemed by the Judge to be a good service, if it shall be proved to his satisfaction that such party was about to remove out of the jurisdiction of the Court.

New.

See sec. 23,
p. 293.

86. All the papers in the cause received or filed by the Clerk shall be kept by him together in the original summons, and be produced by the Clerk at the hearing of the cause, or when required, on application to the Judge. The original summons, in all cases, shall be printed on a half-sheet of foolscap, in order that the papers may be so kept therein.

Secs. 87, 88,
p. 45, note (o),
p. 126, note
(x); seca 90,
91, p. 46,
Form 102.

87. The notice of payment into Court under sections 88 and 91 of the Act to be given by the Clerk, shall be according to Form 102, sections 9 and 10.

[The section here numbered 88 should be 87.—See p. 200, Form 68 (c).]

Rules 20, 21,
29 and 30,
Sects. 87, 88
and 91, pp.
45, 46.

Form 102.

Sec. 86, p.
14, note (m),
Rule 147,
Form 114.

88. In case the Defendant shall have given the Clerk notice that he disputes the Plaintiff's claim, or any other notice of which the Plaintiff should be informed before the trial, or if the Defendant has given a confession, or failed to give notice of defence when required, the Clerk shall immediately send the Plaintiff notice thereof; (Form 102, as the case may require.)

89. In every case in which the Clerk is required to tax costs, he shall make out a bill in detail, and the same shall be endorsed upon or annexed to the

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90. Every Bailiff receiving summons for service from a Clerk, shall, within six days after service has been effected, make a return to such Clerk, shewing the mode of service, and for every such return and attending at the Clerk's office to make the necessary affidavit of service, the Bailiff will be entitled to a fee of ten cents, to be allowed as costs in the cause; but he shall not be entitled to such fee unless the return be duly made within the six days mentioned. And where a summons has not been served, the Bailiff shall, immediately after the time for service has expired, return the same to the Clerk, stating the reason for non-service, in writing, on the back of the summons.

Sec. 79,
p. 41,
notes (c), (d),
and secs. 18,
19, p. 291,
note (p).

91. The Bailiff shall attend every sitting of the Court at the place appointed for holding the same, at such time as shall be required by the Judge, and see that all suitable preparations are made for the proper accommodation of the Court. He shall make all necessary proclamations, preserve order, call the parties and witnesses, and perform such other duties as may be imposed by the Judge. And for calling the parties and their witnesses he shall be entitled to receive, in every defended case, the sum of five cents to be taxed as costs in the cause.

Secs. 182,
183, p. 91,
and 184, p.
92, note (n).
Sec. 23,
p. 293.

92. The Bailiff shall keep a book (see Form 126), to be called "*The Bailiff's Process Book*," and he shall enter therein every warrant, process, order or Execution which he has been required to serve or execute, and shall enter, from time to time therein, what he shall have done under or with each said warrant, process, order or execution, and if the same be not executed or served according to the exigency thereof, why it was not so executed or served; and the Bailiff shall, at all reasonable times, give to a suitor or his agent every information he may require as to the execution or service, or non-execution or non-service of any warrant, process, order or execution which has been issued at his

Sec. 79,
page 41,
note (c), and
sec. 23, p.
293.

instance; and the book so required to be kept shall at all times be open to the inspection of the Judge or Clerk.

Note (g),
page 121.

Form 126.

93. At every Court, and at such other times as the Judge shall require, the Bailiff shall deliver to the Clerk of the Court a statement or return on oath, (Form 126,) of what shall have been done, since his last return, under every warrant, precept, and writ of execution, which he shall have been required to execute.

94. The returns mentioned in the 93rd Rule shall be filed by the Clerk in his office, and be open, without fee, to the inspection of any person interested; and the Clerk shall examine such returns, and if found correct and complete, within ten days after the receipt thereof, endorse thereon a memorandum in the following words: "I have carefully examined "the within return, the same is full, true, and cor- "rect, in every particular, to the best of my know- "ledge and belief. Dated the day of
"18 , Clerk." And if such returns be found by the Clerk to be incorrect or incomplete, he shall forthwith notify the same, with the particulars thereof, to the Judge, and if no return be made, he shall notify the Judge thereof accordingly.

Sec. 23, p.
10, and secs.
185 and 186,
pp. 92, 93,
note (p); sec.
23, p. 293,
and note (p),
p. 68.

95. In case the Clerk shall receive money for any party, by virtue of his office, he shall, without charge therefor, forthwith notify the party entitled thereto, or the Clerk from whom he received the transcript, that the same is received, and subject to his order, and if he shall fail so to notify the party and pay over the money upon demand, he shall be subjected to the loss of his office.

See note (p),
p. 68; secs.
148, 149, p.
72, note (p);
sec. 185, pp.
92, 93, note
(p), and sec.
23, page 293.

Sec. 185, p.
92, and sec.
23, p. 293.

96. Every Bailiff receiving any money by virtue of his office, shall, within six days after the receipt thereof, pay over or transmit the same to the proper Clerk, and neglecting or failing to do so, shall be subjected to the loss of his office.

97. The Clerks and Bailiffs of the Court shall not upon any pretence whatever, withhold any money.

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received for suitors, on the ground that the Clerk or Bailiff may be indebted to the officer holding such money, either for fees or costs or otherwise; but all such moneys, when received or collected, shall at once be duly paid over to the order of the party entitled to the same without reference to such accounts.

98. In case the proceedings in any suit shall be hindered or delayed by the neglect or misconduct of the Clerk or Bailiff of a Foreign Court or of the Home Court, the Clerk or Bailiff causing the same shall forfeit all fees in such suit, and shall, in addition thereto, pay any loss or damage that may result from such hindrance or delay to the party suffering therefrom.

99. No Clerk or Bailiff shall, directly or indirectly, purchase or be concerned in the purchase, or have any personal interest in a suit or judgment or claim in suit, in the Court of which he shall be an officer, and any Clerk or Bailiff transgressing this rule shall be subjected to the loss of his office.

100. No Clerk or Bailiff shall, either by himself or his partner in business, be engaged as agent for any party, during the conduct of the cause in Court, and any Clerk or Bailiff transgressing this rule shall be subjected to the loss of his office.

WARRANTS OF COMMITMENT.

101. Warrants of Commitment shall bear date on the day on which the order for commitment is entered in the Procedure Book, and shall have endorsed thereon the amount of debt and costs on such proceedings, or of fine and costs up to the time of its delivery to the Bailiff for execution, and shall continue in force for three calendar months from such date and no longer, unless renewed by an *ex parte* order of the Judge, upon affidavit, showing the cause of the non-execution, and that the moneys payable thereunder have not been satisfied.

102. The renewal of a warrant may be made by the Clerk marking on the margin, or endorsing

Sec. 53,
page 19,
note (v); sec.
185, p. 92,
and sec. 23.
page 293.

Sec. 157,
p. 77, note
(h); sec. 185,
p. 92, 93,
note (p);
sec. 23,
p. 293.

Secs. 165 et
seq., pp. 80,
81, et seq.,
note (s);
Forms 93,
94 and 96.

note (s),
Forms 93, 94
and 96. thereon the following words: "Renewed by Judge's
order for three months from the day of
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X — Y —,
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Forms 93
and 94.

103. The Bailiff or other officer executing any Warrant of Commitment, shall, at the time of delivering the party arrested, with the Warrant, to the Jailer, indorse on the Warrant the number of miles, shewing the amount of mileage, and also state, in writing, the actual day of the arrest.

AMENDMENTS.

Sec. 2, page
276, notes
(b), (c), (cc),
Forms 22
and 23.]

104. In case a special summons is issued when an ordinary summons should be issued, or *vice versa*, the same may be altered or amended by order of the Judge, either before or at the hearing, on such terms as the Judge may direct.

Sec. 69, p.
34.

105. The Plaintiff shall be allowed to amend his proceedings by striking out a Defendant's name at any time upon payment of such costs as the Judge shall order, or the Judge in his discretion may allow the plaintiff to make such amendment, and order a judgment to be entered as in case of non-suit against the Plaintiff in favor of the Defendant whose name has been struck out.

Sec. 69, p.
34.

106. In case an action shall be brought in the name of an assignee or person beneficially interested upon a chose in action which is not legally assignable, the Judge may at any time order the proceedings to be amended, by substituting the name of the person legally entitled to sue for that of the Plaintiff, upon such terms as to indemnity for costs or otherwise as to him may seem meet.

Sec. 69, p.
34.

107. Where a party sues, or is sued in his own right, and it appears at the hearing, that he should have sued, or been sued, in a representative character, the Judge may, at the instance of either party, and on such terms as he shall think fit, amend the proceedings accordingly; and the case shall then proceed in all respects as to set-off and other matters,

as if the proper description of the party had been given in the summons.

108. Where the name, or description of a *Plaintiff* in the summons, is insufficient or incorrect, it may at the hearing be amended, at the instance of either party, by order of the Judge, on such terms as he shall think fit; and the cause may then proceed, as to the set-off and other matters, as if the name and description had been originally such as it appears, after the amendment has been made.

109. In actions by or against a husband, if the wife is improperly joined or omitted, as a party, the summons may, at the hearing, be amended at the instance of either party, by order of the Judge, on such terms as he shall think fit; and the cause may proceed as to set-off and other matters, as if the proper person had been made party to the suit.

110. Where it appears at the hearing that a *greater number* of persons have been made Plaintiffs, than by law required, the name of the person improperly joined may, at the instance of either party, be struck out by order of the Judge, on such terms as he shall think fit; and the cause may proceed as to set-off, and other matters, as if the proper parties only had been made plaintiffs.

111. Where it appears at the hearing, that a *less number* of persons have been made plaintiffs than by law required, the name of the omitted person may, at the instance of either party, be added by order of the Judge, on such terms as he shall think fit, and thereupon the cause may proceed as to set-off and other matters as if the proper persons had been originally made parties; and if such person, either at the hearing or some adjournment thereof, personally or by writing, signed by him or his agent, consent to become a Plaintiff in manner aforesaid, the Judge may then pronounce judgment as if such person had originally been made a Plaintiff; but if such person shall not consent to become a Plaintiff in manner aforesaid, either at the hearing or at the

adjournment thereof, judgment of nonsuit may be entered.

Sec. 69, p.
84.

112. When it appears at the hearing, that more persons have been made Defendants, than by law required, the name of the party improperly joined may, at the instance of either party, be struck out by order of the Judge, on such terms as he shall think fit; and the cause shall proceed, as to set-off and other matters, as if the party or parties liable had been sued, and judgment may be given for the party improperly joined.

Sec. 69, p.
84.

113. Where several persons are made Defendants, and all of them have not been served, the name or names of the Defendant or Defendants, who have not been served, may, at the instance of either party, be struck out by order of the Judge, on such terms as he shall think fit; and the cause shall then proceed against the party served as to set-off and other matters, as if all the Defendants had been served.

Sec. 69, p.
84.

114. Where the name or description of a *Defendant* in a summons is insufficient or incorrect, and the Defendant appears and objects to the description, it may be amended at the instance of either party, by order of the Judge, on such terms as he shall think fit; and the cause may proceed, as to set-off and other matters, as if the name or description had been originally such as it appears, after the amendment has been made; but if no such objection is taken, the cause may proceed, and in the judgment and all subsequent proceedings founded thereon, the Defendant shall be described in the same manner.

Sec. 69, p. 84.

115. Where a person, other than the Defendant, appears at the hearing, and admits that he is the person whom the Plaintiff intended to charge, his name may be substituted for that of the Defendant, if the Plaintiff consents, and thereupon the cause shall proceed, as if such person had been originally named in the summons; and, if necessary, the hearing may be adjourned on such terms as the Judge shall think fit; and the costs of the person originally

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named as Defendant, shall be in the discretion of the Judge.

116. Where a party sues, or is sued in a representative character, but at the hearing it appears, that he ought to have sued or been sued in his own right, the Judge may, at the instance of either party and on such terms as he shall think fit, amend the proceedings accordingly, and the case shall then proceed in all respects, as to set-off and other matters, as if the proper description of the party had been given in the summons.

117. Where, at the hearing, a variance appears between the evidence and the matters stated in any of the proceedings in a Division Court, such proceedings may, at the discretion of the Judge, and on such terms as he shall think fit, be amended.

118. The Judge may at all times amend all defects and errors in any proceeding, whether the defect or error be that of the party applying or not, and all such amendments may be made with or without costs, and on such terms as to the Judge seems fit.

119. In cases of amendment, a corresponding amendment shall be made by the Clerk, in the proceedings of the Court, antecedent to such amendment; and the subsequent proceedings shall be in conformity therewith.

GENERAL RULES.

120. Claims by husbands, in their own right may be joined with claims, in respect to which the wife must be joined as a party.

121. Where the Court gives leave to take any proceeding, such leave shall be minuted in the Procedure Book, but it shall not be necessary to draw up any order.

122. In cases where the hearing is by Jury, the Judge has the same power to non-suit, as in ordinary cases.

Sec. 69, p. 34.

Sec. 69, p. 34.

See sec. 69,
p. 34, and
Rules 140
and 143.

Sec. 69, p. 34.

Sec. 42, page
16, note (q),
Form 4.Secs. 84, p.
44; 95, p. 48,
& 17, p. 290.

123. Under the 72nd section of the Act, the leave to be granted for issuing a summons shall be by the Judge, before whom the action is to be tried under the order; but no leave shall be given to bring a suit in a Division, other than the one adjacent to the Division, in which the party to be sued resides; but the Division may be in the same, or an adjoining County.

Sec. 73, page 38, note (u), Rule 16, Forms 8 & 9.

Sec. 54, page 20, note (w), and page 21; note (x).

124. The Court has no jurisdiction to try an action upon a note of hand, whether brought by the payee, or any other person, the consideration, or any part of the consideration of which, was any gambling debt, or for spirituous or malt liquors, or other like liquors, drunk in a tavern or ale-house.

PARTIES TO LEAVE ADDRESS WITH CLERK.

New.
See sec. 77, p. 41; sec. 91, p. 46; and sec. 93, p. 47; Forms 101 and 102.

125. Whenever the Plaintiff, his attorney or agent, shall enter his claim for suit, or the Defendant shall give notice of set-off or other defence, he shall give to the Clerk his address, or that of his attorney or agent, and the delivery of any notice to such Plaintiff or Defendant, his attorney or agent, or the mailing thereof by the Clerk to such address, shall be a sufficient service, subject, however, to the right of the Judge to put off a trial, or to set aside, or stay proceedings, on his being satisfied that the letter had either not reached the party, or that there has not been sufficient time after service of the process for either party to be prepared for trial, or to get the notices served.

INFANTS.

Sec. 58, page 29, note (j), Form 7.

126. Where an infant applies to enter a suit for any cause of action (other than for wages), he shall procure the attendance of a next friend at the office of the Clerk, at the time of entering the same, who shall undertake to be responsible for costs; and the cause shall proceed in the name of the infant by such next friend but no order of the Court shall be necessary for the appointment of such next friend. If the Plaintiff fail in, or withdraw or discontinue his suit, and do not pay the amount of costs awarded against

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him, proceedings may be taken for the recovery of such amount from the next friend, as for the recovery of any ordinary debt.

CONTINUANCE OF ACTION.

127. In order to prevent the operation of any New statute whereby the time for the commencement of any action is or may be limited, it shall be only necessary to issue the first process or summons; and it shall in no case be necessary to serve or to attempt to serve the same, or to issue an *alias* or *pluries* or successive summons, or otherwise to do any act for the continuance of the action other than serving the defendant with the process, and the process when served shall be a continuance of the action on and from the day on which the first summons or process issued. Provided that no process shall issue after twelve months from the issue of the first process without the order of the Judge; and the Judge shall make no such order after the lapse after eight years from the time when the cause of action accrued, unless it be made to appear to him that service has not been effected by reason of the absence of the Defendant out of the Province.

STATUTORY DEFENCE.

128. In case the defendant desires to avail himself of the law of set-off, or of the statute of limitations or of any defence under any other statute having the force of law in this Province, he shall, not less than six days before the day appointed for the trial, give notice thereof in writing to the Plaintiff, or leave the same for him at his usual place of abode, if living within the Division, or, if living without Division, shall deliver the same to the Clerk of the Court in which the action is to be tried; and in case of set-off he shall deliver to the Clerk a copy of the particulars of such set-off, to be kept with the papers in the cause, and also a copy for the Plaintiff, if his usual place of abode is not within the Division. And the Clerk shall forthwith give to such Plaintiff a notice of such set-off, by mailing the same to him

Secs. 93, 94,
95, 96, pp.
47, 48, notes
(1), (v), (2);
Sec. 17, p.
290, note (o),
Rule 20,
Forms 102

Sec. 35,
p. 14.

in a letter duly registered, addressed to his usual place of abode or business, according to the Form 102, sec. 4, together with one of the copies of the particulars of such set-off.

PAYMENT INTO COURT.

129. When the Plaintiff shall, in accordance with Secs. 87 & 90, the 88th or 91st sections of the Act, signify to the Clerk his intention to proceed for the remainder of his demand, and such signification shall be given within three days after he received notice of the payment into Court, but after the rising of the Court at which the summons was returnable, the case shall be tried at the then next sittings of the Court, and be put upon the list for that Court in the regular order.

Pages 45
and 46.

130. In case of payment of money into Court under the 87th or 90th sections of the Act, the same shall not be paid out to the Plaintiff until the final determination of the suit, unless the Judge shall otherwise order.

CONFESSION BEFORE ACTION.

Secs. 117,
118, pp. 58,
59, and page
127, note (y),
Sec. 2, p. 276,
note (c),
Rules 3 & 4,
Forms 16 &
108.

131. Every confession or acknowledgment of debt, taken before suit commenced, must shew therein, or by statement thereto attached at the time of the taking thereof, the particulars of the claim, for which it is given, with the same fullness and certainty as would be required in proceedings by "Special Summons;" and unless application for judgment on such confession shall be made to the Judge, within three calendar months next after the same is taken, or at the sittings of the Court next after the expiration of such period, no execution shall be issued on the judgment to be rendered, without an affidavit by the Plaintiff or his agent, that the sum confessed, or some and what part thereof, remains justly due; and applications for judgment shall be made at a Court holden for the Division, wherein the confession was taken.

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NOTICE OF ADMISSION OF PART.

132. With a view to save unnecessary expense in proof, the Defendant or Plaintiff shall be at liberty to give the opposite party a notice (Form 103) in writing, that he will admit, on the trial of the cause, any part of the claim or set-off, or any facts which would otherwise require proof; and after such notice given, the Plaintiff or Defendant shall not be allowed any expense, incurred for the purpose of such proof; the notice to be served on the Plaintiff or Defendant, or left at his usual place of abode, at least six days before the day appointed for the trial or hearing.

Form 103,
sec. 36, p. 14.

AFFIDAVITS AND OATHS.

133. Every affidavit, in any proceeding in the Court, must be entitled in the Court and cause, (if a cause has been commenced) stating the christian and surname of the parties as in the summons, and also that of the deponent, and his place of abode and addition; and if an affidavit be sworn by an illiterate person, the jurat must contain a certificate of the Clerk or Commissioner administering the oath, that the affidavit was read in his presence to the party making the same, and that such party seemed perfectly to understand it; and there shall be no erasures or interlineations in any jurat: but the Judge shall not be bound to reject, as insufficient, any affidavit not complying with the above requisites, or any of them, but may, in his discretion, receive the same.

Sec. 104,
p. 52, and
p. 131,
note (a),
Form 7, (a),
p. 150, and
Forms 8, 9,
11, 13, 14, 40,
106 to 116,
121, 126.

134. Oaths and affirmations administered to witnesses in open Court or upon any *viva voce* examination before the Judge, and to jurors and others, may be in the forms prescribed.

STAMPS.

135. The stamps for fees payable on "entering account and issuing summons" shall be attached to the face of the summons, and the proper stamps for the ordinary hearing and for judgment or order shall be attached to the back of the summons, upon which the trial is had or the judgment rendered; and the stamp for every other matter or proceeding, for

Table of
Fees, p. 111,
note (v).

27 & 28 Vic.
cap. 5,
p. 225.

which a fee is payable to the fee fund, shall be attached to some paper in the cause, according to the directions of the Judge.

Sec. 174 et seq., pp. 84, et seq.
Replevin
Acts, pp. 201 et seq.

186. The amount of fees and stamps payable in Replevin quits and in Interpleader issues shall be regulated according to the amount in value of the property or money in dispute; and the same stamps and fees shall be required and payable on an *alias*, *pluribus* or renewed summons as upon an original, and the same with regard to fees on renewals of executions against goods and warrants of commitment.

INSPECTION OF DOCUMENTS.

See Rule 2,
Interpretation (18) p.
816; note (t)
to old Rule
26, page 125.

187. When, in any action, the Defendant is desirous of inspecting any deed, bond, or other instrument or writing in which he has an interest, and which shall be in the possession, power, or control of the Plaintiff, he may, within four days from the day of the service of the summons, give notice to the Plaintiff by pre-paid and registered post letter or otherwise, that he desires to inspect such instrument, at any place to be appointed by the Plaintiff, within the division on which the suit is brought; and the Plaintiff shall appoint a place accordingly; but if the Plaintiff neglects or refuses to appoint such place, or to allow the Defendant or his agent to inspect it within three days from the day of receiving such notice, the Judge may, in his discretion, on the day of hearing, adjourn the cause, for the purpose of such inspection, and make such order as to costs, as he shall think fit.

DISCONTINUANCE.

See Rule
128, Form
109.

188. If the Plaintiff be desirous of not proceeding in the cause, he shall serve a notice thereof, as provided, respecting the service of a notice of set-off and pay the Defendant's taxable costs (if any), and after receipt of such notice, the Defendant shall not be entitled to any further costs than those incurred up to the receipt of such notice, unless the Judge shall otherwise order; but if the Plaintiff fails to give such notice and pay such costs, and does not

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as in ordinary cases of nonsuit or of default by Plain-
tiff, and where a cause is not withdrawn until after
the opening of the Court, the hearing fee shall be
charged unless otherwise ordered.

ADJOURNMENT OF SUIT.

139. Where a cause is adjourned, no order of adjournment shall be served on either party, except by direction of the Judge; and where the adjournment is opposed by either party, a hearing fee, as for a defended cause, shall be charged, and the usual costs of the day, in the discretion of the Judge. Sec. 88, p. 44.

140. When anything required by the practice of the Court to be done by either party, before or during the hearing, has not been done, the Judge may, in his discretion and on such terms as he shall think fit, adjourn the hearing to enable the party to comply with the practice. See Rule 118

PUTTING OFF TRIAL.

141. Either party to an action may apply to the Judge, in writing and as required by Rule 144, at any time before the hearing, for an order to put off the trial on account of the absence of a material witness (whose name should be stated), or other sufficient grounds, to be disclosed on affidavit, and the Judge, in granting or refusing the application, may order the payment of costs, or impose such terms as he thinks fit. See Rule 144

NEW TRIAL.

142. Application for new trial may be made *viva voce*, and determined on the day of hearing, if both parties be present; but if made when both parties are not present, it shall be in writing, and show briefly the grounds on which it is made, which grounds, if matters of fact requiring proof, shall be supported by affidavit. Sec. 108,
107, pp. 53,
54, note (3),
Forms 76
and 101.

(a). A copy of the application and of every such affidavit shall be served by the party making the

same on the opposite party or his agent, or left at his usual place of abode or business, if within the Division; or if without the Division, then with the Clerk, who shall forthwith transmit the same forthwith to the opposite party.

(b). The application and affidavits (if any) together with an affidavit of the service thereof, shall be delivered to the Clerk, within fourteen days after the day of trial, to be by him, on receiving the fees and necessary postage, and stamps, transmitted to the Judge, with a copy of the original claim, and other papers requisite to the proper understanding of the case, which delivery to the Clerk shall operate as a stay of proceedings, until the Judge's final decision on the application is communicated to the Clerk.

(c). The Judge after receiving such papers shall delay for six days deciding upon the application, to enable the opposite party to answer the same in writing or by affidavit, if facts stated by the applicant in his affidavit are disputed; and the decision of the Judge (Form 76) shall be transmitted to the Clerk by mail, who shall, if a new trial be ordered, notify the parties thereof by mail or otherwise, and the suit shall be tried at the next sittings of the Court, unless the Judge shall otherwise order. (See Form 101).

(d). If the application be refused, or if the party applying shall fail to comply with the terms imposed by the Judge, the proceedings in the suit shall be continued, as if no such application had been made. The Judge, instead of deciding the same, may hear the parties on the matter of such application, at the next sittings of the Court, or at such other time and place as he may appoint, which decision shall be sent to the Clerk, and be by him communicated to the parties in like manner.

(e). The Judge may in his discretion make it a condition of granting a new trial, that it shall take place before a jury, whether the first trial took place before a jury or not; but if either party required a jury to try the case in the first instance, he shall be entitled to another jury on depositing the necessary

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fees for summoning such jury; and in such case the order for the new trial shall direct the summoning of a jury. (See Form 101).

(f). Where, under the 106th section of the Act, judgment in writing is delivered at the Clerk's office, application for a new trial may be made within fourteen days from the day of delivering of such judgment.

SETTING ASIDE OR STAYING PROCEEDINGS.

143. The Judge may, in any case, refuse to set aside or to hold void, any of the proceedings, on account of any irregularity or defect therein, which shall not, in his opinion, be such as to interfere with the just trial and adjudication of the case upon the merits; and may at all times amend all defects and errors in any proceeding, whether the defect or error be that of the party applying or not, and all such amendments may be made with or without costs, and on such terms as to the Judge seem fit.

See Rule 118
Sec. 68, p 34.

144. All applications to the Judge to set aside or stay any order, judgment, process or proceeding in any cause or matter in a Division Court, and all other applications, except in matters which may be disposed of upon an *ex parte* application to the Judge, and applications otherwise specially provided for by these rules, may be made *viva voce* at any sitting of the Court, if both parties be present, or upon affidavit, the opposite party having notice of such application and of the grounds thereof, and the order or decision of the Judge upon such application, if made at a sitting of the Court, shall be entered by the Clerk as in other cases of order made: if made upon affidavit elsewhere it shall be mailed to the Clerk by the party obtaining the same, and the Judge may enlarge the motion for further affidavits or evidence to such time and place as he may choose, or on such terms as he thinks fit.

See secs. 69,
p. 34, and
108, pp. 54,
55, note (m).

POSTAGE AND REGISTRATION OF LETTERS.

145. All letters enclosing any papers in a cause sent from one Division Court officer to another, or to

Sec. 23
p. 202

a party to a suit, or to the Judge, and all necessary notices sent by the Clerk shall be prepaid and registered; and the costs of such postage and registration shall be costs in the cause.

COSTS OF APPEAL FROM COURT OF REVISION.

146. In appeals to the Judge from the Court of Revision, the costs shall be taxed according to the schedule of fees as in suit for the recovery of sums exceeding forty and not exceeding sixty dollars; and the stamps for entering appeal, hearing, and order, shall be affixed by the Clerk to the notice of appeal given to him.

WITNESS FEES.

Sec. 100, p.
5, note (h),
Form 8, and
see note (bb),
pp. 131, 132.

147. The Clerk shall determine (subject to appeal to the Judge) what number of witnesses shall be allowed on taxation of costs; the allowance for whose attendance shall be according to the scale, (Form 3), unless otherwise ordered; but in no case to exceed such scale, except the witness attends under *subpœna* from the Superior Courts; and, before allowing disbursements to witnesses, the Clerk shall be satisfied that the witnesses attended, and that the claim for fees is just; and if a witness attends two or more trials the fees shall be apportioned between the different causes.

UNAUTHORISED FORMS AND PROCEEDINGS.

Sec. 23,
p. 293.

148. All proceedings, books and documents shall be in forms similar to the forms to these rules appended, where the same are applicable, and no printed forms shall be used by any clerk or bailiff of a Division Court unless first approved by the Judge in writing, as being in accordance with the forms appended to these rules, and if an authorized form shall be used no fee shall be payable to the officer in respect thereto, and in cases where no forms are provided, parties shall frame the proceedings or documents using as guides those appended to these rules.

JUDGMENTS.

149. Every judgment, order, and decree of the Court, shall be entered by the Clerk in the Procedure

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Book, according to the Forms 45 to 75 inclusive or to the like effect; and when any order is made for the payment of any debt, damages, costs, or other sum of money, the same shall be payable at the office of the Clerk, at the expiration of fifteen days from the rendering of judgment, unless the Judge otherwise order, but where judgment is signed by the Clerk under section 2 of the Act of 1869, execution may issue forthwith.

Forms 45 to
75, sec. 2,
p. 276, sec.
107, p. 58,
sec. 108, p.
64, and notes
(k) (l).

150. After an award is made and filed (with an affidavit of the due execution thereof) under sections 109, 110 and 111 of the Act, the duty of the Clerk is, forthwith to enter the judgment on such award, and issue execution thereon, at the request of the party entitled to such execution, without any order from the Judge.

Secs. 109,
110, 111, pp.
65 *et seq.* and
notes (m),
(p), (q),
Forms 36,
55 and 109.

151. Where a Plaintiff avails himself of the provisions of section 81 of the Act, and proceeds against only one or more of several persons jointly liable, the Defendant sued may avail himself of any set-off or other defence to which he would be entitled, if all the persons liable were made Defendants.

Sec. 81, p.
12, note (n).

152. When judgment is given for the Defendant on a set-off he will be entitled to issue execution and to take proceedings as in ordinary cases for the recovery of the balance of his set-off which exceeds the Plaintiff's claim, if such balance does not exceed \$100, or the Defendant is willing to abandon the excess over \$100.

Sec. 17, p.
290, note (o).
Forms 57 &
58.

ABATEMENT.

153. Where one or more of several Plaintiffs or Defendants shall die before judgment, the suit shall not abate, if the cause of action survive to, or against the surviving parties.

Sec. 69, p. 84.

154. When one or more of several Plaintiffs or Defendants shall die after judgment, proceedings thereon may be taken by the survivors or survivor, or against the survivors or survivor, without leave of the Court.

[These rules say nothing of the case of the death of a sole plaintiff or defendant, which is nowhere provided for, unless it is governed by the practice of the Superior Court under sec. 69, p. 84, though it is doubted by some whether that section applies except in mere matters of practice.]

REVIVING JUDGMENTS, &c.

Sec. 1, p.
275, note (a.)
and Con.
Stat. U. C.
cap. 22, sec.
301.

Same.

Sec. 1, p. 275,
note (a) and
Con. Stat.
U. C., cap.
22, sec. 302.

155. During the lives of the parties to a judgment, or of any of them, execution or other process may be issued at any time within six years from the recovery of the judgment, without a revival thereof.

156. No execution or other process shall, without leave of the Judge, issue on a judgment more than six years old, unless some payment has been made thereon within twelve months previously; but no notice to the Defendant, previously to applying for such leave, shall be necessary, and such leave shall be expressed on the execution or warrant, or summons in the words, "*Issued by leave of the Judge.*"

157. In case it becomes necessary to revive a judgment, by reason of a change by death, or otherwise, of the parties entitled or liable to execution; the party alleging himself to be entitled to execution may sue out a summons (Forms 30, 33) for the revival of the judgment, and issue an execution thereupon. In case it shall appear, upon such application, that the party making the same is entitled to execution, the Judge shall order execution to issue accordingly, and shall also order whether or not the costs of such application shall be paid to the party making the same; and in case it shall not so appear, the Judge shall discharge or dismiss the summons with or without costs.

Sec. 141, p.
69, note (r.).

Sec. 24, p.
293, note (r.).

158. The renewal of all writs of execution may be made from time to time, before the expiration thereof, by the Clerk of the Court issuing the same, by marking on the margin of the writ a memorandum to the following effect:—"Renewed for 30 days from the date hereof."

Dated day of 18 X.Y., Clerk.

SUITORS' MONEYS: HOW PAYABLE.

New.

Sec. 23, p.
293, and
Rule 95.

159. It is the duty of parties entitled to moneys collected by officers of the Court to direct how the same are to be transmitted to them. The Clerk shall not be bound to transmit by post any such moneys, nor to procure and transmit post office orders there-

for, except upon the request and at the expense of the party entitled thereto. Without such direction and request, all moneys are payable to the parties at the office of the Clerk without the payment of any fee whatever; in no case is the Clerk to transmit moneys to the Clerk of another Court, without the written order of the party entitled thereto, or his authorized agent.

TRANSCRIPTS OF JUDGMENT.

160. Every transcript of a judgment for a County Court, shall be prepared by the Clerk upon a full sheet of foolscap paper, folded to the usual size of judgment rolls in the Courts of Record, carefully written in a plain hand or printed without contractions of words or figures, and shall be according to the Form 99, and if a judgment has been revived the order of revival or its purport shall be set forth therein.

161. When upon the application of any Plaintiff or Defendant having an unsatisfied judgment in his favor, a transcript of the entry of such judgment, under sec. 139, or a transcript of the judgment under sec. 142 of the Act is issued from the Court in which the judgment has been recovered, an entry thereof shall be made by the Clerk in the Procedure Book, and no further proceedings shall be had in the said Court upon the said judgment, without an order from the Judge.

162. No transcript or copy of a judgment shall be issued or acted upon under the 137th or 139th sections of the Act, where the proceedings have abated, or in a case where no warrant of execution or judgment summons shall have issued on a judgment more than six years old, unless such judgment shall have been revived.

163. The entries of proceedings on a transcript, under the 139th section of the Act, may be made in the Procedure Book, in the form of an ordinary suit, as near as may be. And the Procedure Book shall, for that purpose, be the transcript of Judgment Book required by the Act.

OFFICERS' FEES.

Sec. 22,
p. 292,
Forms 1 & 2,
and Rule 1.

164. The fees set forth in the tariff marked "Schedule of Clerk's Fees," (Form 1) and "Schedule of Bailiff's Fees," (Form 2), shall be the fees to be received by the several Clerks and Bailiffs of Division Courts on and after the day that these rules shall come into force, for and in relation to the duties and services to be performed by them as officers of the said Courts, and shall be in lieu of all other fees heretofore receivable for the same proceedings.

165. So far as applicable, these Rules shall extend and apply to the judicial District of Algoma and to the District of Muskoka, and the several Courts established, or to be established therein, and to the proceedings in such Courts.

Sec. 22,
p. 292.

166. The regular meeting of the Board shall be at the City of Toronto, on the third Monday in June, annually.

Dated Toronto, 1st July, 1869.

JAS. ROBERT GOWAN.
S. J. JONES.
D. J. HUGHES.
JAMES DANIELL.
JAS. SMITH.

Approved.

WM. B. RICHARDS, C. J.
JOHN H. HAGARTY, C. J. C. P.
ADAM WILSON, J.
JOHN W. GWINNE, J.
THOMAS GALT, J.

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SUPPLEMENTARY RULE.

SUPPLEMENTARY RULE RESPECTING THE FEE FUND ACCOUNTS AND THE CANCELLATION OF STAMPS BY CLERKS OF DIVISION COURTS.

We, the undersigned, "The Board of County Judges," acting under and in pursuance of the powers vested in us by law, as recited and set forth in the general Rules for regulating the practice of the Division Courts in Ontario, dated the first day of July, 1869, have framed the following supplementary general Rule and Order, to be in force until otherwise ordered, and we do hereby certify the same to the Honorable the Chief Justice of Upper Canada accordingly:—

Sec. 2, p.
2, note (c);
sec. 70, p.
34, note (p);
Sec. 22, p.
292.

167. The system of paying Court fees by the use of stamps having superseded the necessity for Clerks of Division Courts keeping an account of such fees in a book as prescribed by the 36th section of the Act, but not the necessity of submitting the proceedings on which Court fees are due to the Judge, or of his examining the proceedings of the Court, and comparing them with the stamps used and cancelled; in order, therefore, to facilitate the examination by the Judge to ascertain that proper stamps have been affixed for all fees payable to the Fee Fund in respect to proceedings in the said Courts, and in order to detect errors and omissions, and to prevent frauds, it is hereby ordered:—

Sec. 130, p.
62; sec. 23,
p. 293.

(a). That the "Judge's list" at every sittings of the Court shall include therein all the causes (in the order in which the suits are entered) that have been commenced by ordinary or special summons, or otherwise, since the last sittings of the Court, and also all adjourned cases remaining undisposed of, and shall distinguish in such list the causes in which a Defendant, or one or more Defendants, have not been served; those withdrawn, paid, settled, confessed; those in which judgments have been entered by the

Clerk, and those which remain to be disposed of by the Judge.

Sec. 23, page
293, and sec.
36, p. 15;

27 & 28 Vic.
cap. 5, page
225.

Secs. 16, 17,
p. 226, and
sec. 20, p.
227.

Sec. 23, p.
293, & secs.
29 and 30,
p. 228.

Rule 2.

(b). The Clerk shall, at every sittings of the Court, produce to the Judge all the process and papers in every cause necessary to be entered on the "Judge's list," so as to enable the Judge, upon inspection, to ascertain that the Court fees have been all duly paid by proper stamps, and that such stamps have been legally cancelled; and otherwise to enable the Judge to carry out and effectuate the spirit and intention of the said 36th Section of the Act, and of the Act respecting stamps on law proceedings (27 & 28 Vic. cap. 5) in connection therewith.

(c). As soon as the trial or hearing in each case is concluded, the Clerk shall affix to the back of the summons the proper stamps for hearing and order, and shall then, or at the close of the Court, submit such stamps, duly cancelled, to the Judge for his inspection.

(d). Any Clerk wilfully neglecting any of the provisions of the Act respecting the collection of the Court fees by stamps, or his duty under this Rule, shall be subjected to the loss of his office.

(e). In construing this Rule, the second general Rule shall apply as if incorporated herewith.

Dated 23rd September, 1869.

JAS. ROBT. GOWAN,
Co. J., Simcoe.

S. J. JONES,
Co. J., Brant.

D. J. HUGHES,
Co. J., Elgin.

JAMES DANIELL,
Co. J., Prescott & Russell.

JAS. SMITH,
Co. J., Victoria.

Approved.

WM. B. RICHARDS, C. J.

JOHN H. HAGARTY, C. J., C. P.

JOS. C. MORRISON, J.

JOHN W. GWINNE, J.

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FORMS.

(I). SCHEDULE OF CLERK'S FEES.

	Not exceeding ing \$20.	Exceeding \$20 and not \$60.	Exceeding \$60.	Rule 164, Sec. 22, page 292.
Receiving claim, numbering and entering in Procedure Book.....	\$ c. 0 10	\$ c. 0 10	\$ c. 0 10	
Issuing Ordinary Summons, with necessary notices thereon, or Judgment Summons.....	0 20	0 30	0 40	
(For Special Summons, with warnings subjoined. Summons in Replevin or Interpleader, or under the Garnishee clauses, five cents extra.)				
Copy of Process, of claim or set off, or other paper required for service, or transmission to Judge, each.....	0 10	0 15	0 20	
(Where the claim or set off exceeds 3 folios of 100 words in length, for every additional folio 5 cents, if allowed by the Judge.)				
Summons to Witness, with any number of names therein.....	0 10	0 10	0 10	
For every copy to serve.....	0 05	0 05	0 05	
Drawing every necessary affidavit, and administering oath.....	0 20	0 20	0 20	
(When exceeding 2 folios in length, 5 cents for every additional folio, if allowed by the Judge.)				
Entering Bailiff's Return to Process, or Judge's order.....	0 05	0 05	0 05	
Entering notice of set off, plea of payment, or other defence requiring notice to the plaintiff, or notice of admission as to claim.....	0 15	0 15	0 15	
Taking confession of Judgment.....	0 10	0 10	0 10	
Every notice required to be given by Clerk to any party to a cause or proceeding, or to the Judge in respect to the same, and mailing.....	0 10	0 10	0 10	
Entering every Judgment, or order made at the hearing, or final order made by the Judge, or final Judgment entered by Clerk.....	0 25	0 25	0 25	

SCHEDULE OF CLERK'S FEES.

	Not exceeding \$20.	Exceeding \$20 and not \$50.	Exceeding \$50.
Summons for each Juryman, when called by the parties	\$ 0 10	0 10	0 10
(Only twenty-five cents in all to be al- lowed for a Judge's Jury.)			
Order of Reference, attaching order or other order drawn and entered by Clerk	0 15	0 15	0 15
Transcript of Judgment, (under sec. 189 or 142)	0 25	0 25	0 25
Every Writ of Execution, Warrant of Attachment, or Warrant for arrest of delinquent	0 30	0 40	0 50
Every Bond when necessary, including Affidavit of Justification	0 50	0 50	0 50
For necessary entries made in the debt attachment book in each case, (in all) Transmitting papers for service to an- other Division, or to Judge, on appli- cation to him, including the necessary entries, but not including postages	0 15	0 15	0 15
Receiving papers from another Division for service, entering the same, hand- ing to the Bailiff, receiving his return, and transmitting same (if return made promptly, not otherwise)	0 20	0 20	0 20
Search by person not a party to the suit or proceeding, to be paid by the ap- plicant, 10 cents; search by a party to the suit or proceeding, where same is over one year old	0 30	0 50	0 80
No fee is chargeable for search to a party to the suit or proceeding, if the same is not over a year old.	0 10	0 10	0 10

		(2). SCHEDULE OF BAILIFF'S FEES.					
Exceeding \$20 and not \$60.	Exceeding \$60.				Not exceed- ing \$20.	Exceeding \$20 and not \$60.	Exceeding \$60.
\$ c.	\$ c.						
0 10	0 10	Service of summons, order or other process, on each person, (except summons to witness and summons to juryman). Service of summons on witness or juryman, or service of notice.....		0 10	0 20	0 80	
0 15	0 15	Taking confession of Judgment, and attending to prove.....		0 10	0 10	0 10	
0 25	0 25	Enforcing every Writ of Execution, Warrant of Attachment, or Warrant against the body, each.....		0 10	0 10	0 10	
0 40	0 50	(Executing summons in replevin, including service on Defendant, same charge.) Every mile necessarily travelled to serve summons, or process, or other necessary papers, or in going to seize on attachment, or in going to seize under writ of execution, where money made or case settled after levy		0 80	0 50	0 70	
0 50	0 50	(In no case is mileage to be allowed for a greater distance than from the Clerk's office to the place of service or seizure.)		0 10	0 10	0 10	
0 15	0 15	Mileage to arrest delinquent under warrant, to be at 10 cents per mile, but for carrying delinquent to prison, including all expenses and assistance, per mile		0 20	0 20	0 20	
0 20	0 20	Every schedule of property seized, attached or replevied, including affidavit of appraisal, when necessary.....		0 30	0 50	0 75	
0 30	0 30	Every bond, when necessary, including affidavit of justification		0 50	0 50	0 50	
0 10	0 10	Every notice of sale, not exceeding three, under execution or under attachment, each		0 10	0 10	0 10	
		There shall be allowed to the Bailiff for removing or retaining property seized under execution or attached, reasonable and necessary disbursements and allowance, to be first settled by the Clerk, subject to appeal to the Judge.					
		There shall be allowed to the Bailiff three per cent. upon the amount realized from the sale of property under any execution, but such per centage not to apply to any overplus thereon.					

(3.) ALLOWANCE TO WITNESSES.

Rule 147,
Sec. 100, p.
50 note (A),
Secs. 98, 99,
Page 49.

Attendance per day in Court..... 75 cts.
Travelling expenses, per mile, one way 10 cts.

N.B.—If a witness travels by railway or other public conveyance he may only be allowed (besides the per diem allowance) instead of mileage the ordinary fare and anything he is obliged to pay besides, owing to delays caused by casualties, but in no case to exceed what the mileage would be if that mode of calculation were adopted.

FEES TO JURORS AND APPRAISERS ALLOWED
BY THE ACT.

To JURORS.

Tariff p. 114. Each juror sworn in any cause, out of the money deposited with the Clerk for jurors' fees, 10 cts.

To APPRAISERS.

FEES OF APPRAISERS OF GOODS, &c., SEIZED UNDER
WARRANT OF ATTACHMENT.

Tariff p. 115. To each appraiser, 50 cts. per day during the time actually employed in appraising goods, to be paid in the first instance by Plaintiff, and allowed in the costs of the cause.

(4.) PROCEDURE BOOK.

Secs. 36, p.
14, & 42, p.
16, note (q),
Rules 77,
148 and 163.

—Division Court in the County of A—,
Ensuing Sittings, 26th October, 1869.

No. 400. A.D. 1869.

X—Y—Clerk.

JAMES BIRD, of _____ vs. THOMAS FISH, of the Village
of _____

1869.	
1st Oct.	Received, particulars in detail, of claim for \$12, Plaintiff paid \$1 towards costs.
2nd "	Issued Special Summons to Bailiff, costs \$, besides mileage.
8th "	Summons returned, served 6th Oct., 5 miles travel.
15th "	Wrote Plaintiff that no defence put in.
17th "	Plaintiff writes requesting judgment to be signed and execution issued.
" "	Judgment signed by Clerk, "The Defendant having been served with special summons and particulars of claim and not disputing same, it is adjudged that the Plaintiff recover \$12 for debt, and \$ costs."
18th "	Issued execution to Bailiff.
20th "	Bailiff returned execution, "fecit" and paid amount \$ to Clerk same day, wrote Plaintiff informing him thereof.
25th "	Paid Plaintiff \$12 debt, and \$1 deposit, in full.

No. 401. A.D. 1869.

JOHN WHITE, of — vs. THOMAS GREEN, of the Village
of B —
the Township of —

3rd Oct.	Received particulars of claim (for tort) for \$25; Plaintiff paid \$4 on costs, and directed two subpoenas, and gave notice of Jury.
4th "	Issued ordinary summons and sent by post (prepaid and registered) to Clerk of Division Court of D — for service.
11th "	Summons returned, served 8th Oct, foreign fees, \$.
" "	Issued Jury summons and subpoenas to Bailiff.
14th "	Jury summonses returned, served 10 miles, subpoenas also served six miles travel.
26th "	Cause tried, "Judgment for Plaintiff on verdict by Jury for \$15 and \$ costs, to be paid in 15 days." \$4.00 allowed Plaintiff for witnesses.
28th "	Defendant paid Clerk \$15 damages, and \$ costs in full; same day notified plaintiff of Payment, by post.
31st "	Paid Plaintiff \$15 damages, \$4 deposit and \$4 witness fees in full.

No. 402. A. D. 1869.

JAMES JONES, of the Township of _____, Primary Creditor.
 THOMAS CLARK, of the Town of _____, Primary Debtor, and
 GEORGE GOOD, of the same place, Garnishee.

5th Oct.	Received of Primary Creditor particulars of claim (not in detail) on contract, for \$50, and memo. of debt owing by Garnishee of \$; deposit of \$4.50, paid.
" "	Issued garnishee summons against Prim. Debtor, and Garnishee to Bailiff.
10th Oct.	Summons returned served on Prim. Debtor 7th Oct., and on Garnishee on 8th Oct. 12 miles travel; Prim. Debtor filed set-off (2 copies).
11th "	Mailed to Prim. Creditor (prepaid and registered) copies of set-off and notice.
12th "	Issued Subpoenas for 4 witnesses for Prim. Creditor, and gave to Bailiff.
13th "	Gave to Prim. Debtor 1 subpoena and 3 copies.
15th "	Bailiff returned Prim. Creditor's subpoenas served, 8 miles travel.
26th "	"On hearing all parties it is adjudged that the Prim. Debtor is indebted to the Prim. Creditor in \$50, besides \$ costs. Also that the Garnishee is indebted to the Prim. Debtor in \$75, now due, which to the extent of the two first mentioned sums it is adjudged be applied in satisfaction thereof, and that the Garnishee do pay the same in 15 days.
6th Nov.	Prim. Creditor paid costs \$ and stated suit is settled by the parties.

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(5). CASH

RECEIPTS.

Suitors' Money paid into the _____ Division Court, for quarter commencing 1st October, 1869.

When received	Style of Cause.	No. of Suit.	From whom received.	When paid out by Clerk.	Signature of person to whom paid.	Amount
1869						
Oct. 1...	Bal. from last qr.	.....	.....	.....	.....	\$ 0 0
Oct. 15.	Doe vs. Roe	186 A.D. 1869	Defendant.	Nov. 1, 1869.	John Sharp, Pltf's Atty.	10 00
Oct. 30.	Den vs. Fen et al.	94 " "	Bailiff.....	Oct. 31, "	Jas. Den.....	40 00
Nov. 10	James vs. Joy ...	450 " 1868	Plaintiff ...	Nov. 26, "	Thos. James.	2 50
Dec. 21.	Dunn vs. Cox ...	312 " 1869	John Cox.	Jan. 5, 1870.	John Dunn.	40 25
Receipts up to 31st December, 1869						112 50
To balance remaining in Court 31st December, 1869, brought forward.....						50 25
1870						
Jan. 10.	Bull v. Brown ...	502 A.D. 1869	Bailiff.....	.....	.....	9 35
do.	do.	do.	do.	.....	.....	.....

CASH

BOOK.

PAYMENTS.

Suitors' Money paid out of the _____ Division Court for Sec. 36, page 16, note (n), Rules, 77 & 148.

When paid out.	Style of Cause.	No. of Suit.	To whom paid.	Amount
31st Oct., 1869.	Den v. Fen <i>et al.</i>	94 A.D. 1869	Plaintiff.....	\$ 0 50
1st Nov., "	Doe v. Roe	136 "	Plaintiff's Attorney	40 00
24th Nov. "	James <i>et al.</i> Joy	450 " 1868	Defendant.....	2 75
Balance to next quarter				50 25
				113 50
5th Jan., 1870.	Dunn v. Cox...	312 A.D. 1869	Plaintiff.....	40 25
&c.	&c.	&c.	&c.	.....

Sec. 20, page
292, Rule 62.

(6). FORM OF DEBT ATTACHMENT BOOK.

Name of Primary Creditor or Plaintiff	Name of Primary Debtor or Defendant.	Date of Judgment, if claim a judgment.	Amount unsatisfied, if claim a judgment.	Amount found due from Primary Debtor to Primary Creditor, when claim not a judgment.	Name of Garnishee.	Date of attaching garnishee or order or garnishee summons.	Amount due ad-judged garnishee.

(7.) UNDERTAKING BY NEXT FRIEND OF INFANT TO BE RESPONSIBLE FOR DEFENDANT'S COSTS.

In the — Division Court in the County of —

I, the undersigned E. F., being the next friend of Rule 123. A. B., who is an infant, and who is desirous of entering a suit in this Court against C. D. of &c., hereby undertake to be responsible for the costs of the said C. D. in such cause, and that if the said A. B. fail to pay the said C. D. all such costs of such cause as the Court shall direct him to pay to the said C. D., I will forthwith pay the same to the Clerk of the Court.

Dated this day of , 18 .

(Signed) E. F.

Witness

(8.) AFFIDAVIT FOR LEAVE TO SUE A PARTY RESIDING IN AN ADJOINING DIVISION.

In the — Division Court in the County of —

I, A. B., of , yeoman (or I, E. F., of , yeoman, agent for A. B. of, etc.,) make oath and say —

Sec. 72, page
38, note (u),
Rules 14, 123
and 133, and
sec. 104, p. 52.

1st. That I have a cause of action against C. D., of , yeoman, who resides in the Division of the County of , (if by agent, "That the said A. B. has a cause of action against C. D. of , yeoman.")

2nd. That I (or the said A. B.) reside in the Division, in the County of

3rd. That the distance from my residence (or from the said A. B.'s residence) to the place where this Court is held is about miles, and to the place where the Court is held in the Division in the County of is about miles.

4th. That the distance from the said C. D.'s residence to the place where the Court is held in the Division where he resides, is about miles, and to the place where this Court is held about miles.

5th. That the said Division and this Division adjoin each other, and that it will be more easy and inexpensive for the parties to have this cause tried in this Division than elsewhere.

Sworn, etc.

A. B. (or E. F.)

(9.) AFFIDAVIT FOR LEAVE TO SUE IN A DIVISION, ADJOINING ONE IN WHICH DEBTORS RESIDE, WHERE THERE ARE SEVERAL.

Sec. 72, page 38, note (u),
Rules 16, 123
and 133, sec. 104, p. 52.

In the —— "Division Court in the County of —— I. A. B., of _____, yeoman, make oath and say, (or E. F. of _____, yeoman, agent for A. B., of etc.,) make oath and say:

1st. That I have (or that the said A. B. has) a cause of action respectively against each of the debtors named in the first column of the Schedule, on this affidavit endorsed.

2nd. That the columns in the said Schedule, numbered respectively 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th, are truly and correctly filled up, according to the best of my knowledge and belief.

3rd. That the Divisions named in the second and third columns of the said Schedule, opposite each debtor's name, respectively adjoin each other.

4th. That it will be more easy and inexpensive for the parties to have the said causes, respectively, tried in this Division, than elsewhere.

Sworn, &c.

A. B. (or E. F.)

(10). SCHEDULE REFERRED TO IN THE WITHIN AFFIDAVIT.
(See 72, page 38, note (u), Rules 16 and 123.)

COLUMNS.

1st.	2nd.	3rd.	4th.	5th.	6th.	7th.
Debtor's name, place of residence, and addition.	Division in which suit is to be commenced.	Number of miles from creditor's resi- dence to where Ct. held in Division in which debtor resides.	Number of miles from creditor's resi- dence to where Ct. held in Division in which debtor resides.	Number of miles from debtor's resi- dence to where Ct. held in Division in which suit to be commenced.	Number of miles from debtor's resi- dence to where Ct. held in Division in which suit to be held.	Number of miles from debtor's resi- dence to where Ct. held in Division in which debtor re- sides.
Jno. Doe, of Salt- fleet, of the U. C. of Wentworth & Halton, yeoman.	Division No. 1 in the United C. ties of Lincoln and Welland.	22		1	5	17
Richard Roe, of Mono, County of Simcoe, Esq.	Division No. 3, of the County of Simcoe.	28		11	18	4

A. B. or (E. F.)

(11.) AFFIDAVIT FOR ATTACHMENT.

(If made after suit commenced, insert style of Court and cause.)

See 109, pp.
99, 100,
note (d).
Rules 35 &
133; Sec. 104,
p. 52; note
(c), p. 159.
N.B. to Form
22, p. 159;
notes (a) (b),
p. 146; and
Form 7 (a),
p. 160.

I, A. B., of the in the County of (or I, E. F., of etc., agent for the said A. B., of etc.) make oath and say:

1st. That C. D. of (or late of in the County of is justly and truly indebted to me, (or to the said A. B.) in the sum of dollars and cents, on a promissory note for the payment of dollars and cents, made by the said C. D. payable to me (or the the said A. B.) at a day now past;

Or for goods sold and delivered
Or for goods bargained and sold
Or for crops bargained and sold
Or for money lent
Or for money paid for the said C. D. } by me (or the
said A. B.) to
the said D. C.;

Or for and in respect of my (or the said A. B.) having relinquished and given up to, and in favor of the said C. D., at his request, the benefit and advantage of work done and materials found and provided and moneys expended by me (or the said A. B.) in and about the farming, sowing, cultivating and improving of certain land and premises;

Or for the use by the said C. D., by my permission (or by the permission of the said A. B.), of messuages and lands of me (or the said A. B.)

Or for the use by the said C. D. of pasture land of me (or the said A. B.), and the eatage of the grass and herbage thereon, by the permission of me (or the said A. B.);

Or for the wharfage and warehouse room of goods deposited, stowed and kept by me (or the said A. B.) in and upon a wharf, warehouse, and premises of me (or the said A. B.), for the said C. D., at his request;

Or for horse-meat, stabling, care and attendance provided and bestowed by me (or the said A. B.), in feeding and keeping horses for the said C. D., at his request; or for work done and materials provided by me (or the said A. B.), for the said C. D., at his request;

Or for expenses necessarily incurred by me (or the said A. B.) in attending as a witness for the said C. D., at his request, to give evidence upon the trial of an action at law then depending in the Court, wherein the said C. D. was Plaintiff and one E. F. Defendant;

Or for money received by the said C. D. for my use
(or for the use of the said A. B.);

Or for money found to be due from the said C. D. to
me, (or to the said A. B.) on an account stated between
them, (or other cause of action, stating the same in ordi-
nary and concise language.)

2nd. I further say that I have good reason to believe
and do verily believe that* the said C. D. hath abs-
conded from that part of the Dominion of Canada
which heretofore constituted the Province of Canada,
leaving personal property liable to seizure under execu-
tion for debt in the County of _____ in this Province.*

(Or instead of matter between the asterisks, the said
C. D. hath attempted to remove his personal property
liable to seizure under execution for debt out of this
Province; or the said C. D. hath attempted to remove
his personal property liable to seizure under execution
for debt from the County of _____ to the County of _____
in this Province; or the said C. D. keeps concealed in
the County of _____ in this Province to avoid service of
process) with intent and design to defraud me (or the
said A. B.) of my (or his) said debt.

3rd. That this affidavit is not made by me nor the
process thereon to be issued from any vexatious or
malicious motive whatever.

Sworn, &c.

A. B.

(12.) ATTACHMENT AGAINST AN ABSCONDING OR
REMOVING DEBTOR.

To A. B., bailiff of the _____ Division Court in the said
County of _____ (or to A. B., a constable of the County
of _____, as the case may be). Sec. 199,
pp. 99, 100;
Form C,
p. 115.

You are hereby commanded to attach, seize, take,
and safely keep, all the personal estate and effects of
C. D. (naming the debtor), an absconding, removing,
or concealed debtor, of what nature or kind soever,
liable to seizure under execution for debt within the
County of (here name the county), or a sufficient portion
thereof to secure A. B. (here name the creditor), for the
sum of (here state the amount sworn to be due), together
with the costs of his suit thereupon, and to return this
warrant with what you shall have taken thereupon, to
the clerk of the (here state the number of the division)
Division Court in the County aforesaid forthwith; and
herein fail not.

Witness my hand and seal (or the seal of the said Court) the day of , one thousand eight hundred and

X—Y—, [L.S.]
Clerk, or Justice of the Peace (as the case may be).

REPLEVIN.

(13) AFFIDAVIT TO OBTAIN JUDGE'S ORDER FOR WRIT OF REPLEVIN.

Sec. 4, pp. 202, 203;
Sec. 1, pp. 207, 208;
Sec. 6, p. 200, Rule 133;
Sec. 104, p. 52.

In the — Division Court in the County of —
County of , I, A. B., of , make oath and say:

To wit. 1st. That I am the owner of (describe property fully) at present in the possession of C. D.; or that I am entitled to the immediate possession of (describe property), as lessee, (bailee, or agent), of E. F., the owner thereof (or as trustee for E. F.) (or as the case may be), at present in the possession of C. D.

2nd. That the said goods, chattels, and personal property are of the value of dollars and not exceeding \$40.

3rd. That on or about the day of , the said goods, chattels, and personal property, were lent to the said C. D., for a period which has expired, and that although the said goods, chattels, and personal property have been demanded from the said C. D., he wrongfully withholds and detains the same from me, the said A. B.; or, that on or about the day of , the said C. D., fraudulently obtained possession of the said goods, chattels, and personal property, by falsely representing that (here state the false representation), and now wrongfully withholds and detains the same from me; or, that the said goods, chattels, and personal property were on the day of last, distrained or taken by the said C. D., under color of a distress for rent, alleged to be due by me, to one E. F., when in fact no rent was due by me to the said E. F., (or as the case may be, setting out the facts of the wrongful taking or detention complained of with certainty and precision).

4th. That the said C. D. resides (or carries on business) at , within the limits of the Division Court in the County of , (or, that the said goods, chattels, and personal property were distrained, (or taken and detained), (or detained), at , within the limits of the Division Court of the County of

Sworn, &c.

A. B.

(14.) AFFIDAVIT TO OBTAIN WRIT WITHOUT ORDER IN FIRST INSTANCE.

(The first four sections may be as above and the following must be stated in addition.)

5th. That the said personal property was wrongfully taken, (or fraudulently got) out of my possession within two calendar months before the making of this affidavit, that is to say, on the day of last.

6th. I am advised and believe that I am entitled to an order for the writ of replevin now applied for, and I have good reason to apprehend, and do apprehend, that unless the said writ is issued without waiting for an order, the delay will materially prejudice my just rights in respect to the said property.

[Or if the property was distrained for rent or damage feasant, then the statement given in the last specific alternative under the 3rd. clause of the above form will be sufficient to obtain writ without order.]

Sec. 4, pp. 202, 203;
sec. 1,
pp. 207, 208;
sec. 6, p.
209; sec.
104, page 52.

(15.) CLAIM IN REPLEVIN.

No. A.D. 18.

In the — Division Court in the — Count of —

A. B. of states that C. D. of did on or about the day of A.D. 18, take and unjustly detain (or detain, as the case may be), and still doth detain his goods, chattels and personal property, that is to say (here set out the description of property) which the said A. B. alleges to be of the value of dollars, whereby he hath sustained damages and the said A. B. claims the said property with damages in this behalf as his just remedy.

A. B.

Sec. 35, p. 14;
sec. 74, p. 39;
see. 1, p. 201;
sec. 17,
p. 206;
Rules 3, 4, 5
and 8.

(16.) PARTICULARS IN CASES OF CONTRACT.

No. A.D. 18.

A. B. of claims of C. D. of the sum of \$ / the amount of the following account, viz., (or "the amount of the note, a copy of which is under written,") together with the interest thereon, [or, for that the said C. D. promised (here state shortly the promise) which undertaking the said C. D. hath not performed, or, for that the said C. D. by deed under his seal dated the day of A.D. 18 covenanted

See Forms in
note (b), page
146, sec. 35,
page 14;
sec. 74, p. 39,
Rules 3, 4, 5
and 8.

to, &c., and that the said C. D. hath broken said covenant whereby the said A. B. hath sustained damages to the amount aforesaid; or for money agreed by the said C. D. to be paid by the said A. B., together with a horse of the said C. D., in exchange for a horse of the said A. B., delivered by the said A. B. to the said C. D.; or for that the said C. D., by warranting a horse to be then sound and quiet to ride, sold the said horse to the said A. B., yet the said horse was not then sound and quiet to ride; or for that the said C. D. in consideration that the said A. B. would supply E. F. with goods on credit promised the said A. B. that he, the said C. D. would be answerable to the said A. B. for the same, that the said C. D. did accordingly supply the said E. F. with goods to the price of \$ and upwards, on credit, that such credit has expired, yet neither the said E. F. nor the said C. D. has as yet paid for the said goods; or for that the said A. B. let to the said C. D. a house for seven years, to hold from the day of , A.D. , at \$ a year, payable quarterly, of which rent quarters are due and unpaid.

For several concise forms see note (b), pp. 146 and 147.

(The above forms are given merely as examples of statements of causes of action, and the claim must show such further particulars as the facts of the case require.)

(17.) PARTICULARS IN CASES OF TORT.

Sec. 85, page 14; sec. 74, page 89; Rules 8, 4, 5 and 8.

No. , A.D. - .

A. B. of states that C. D. of did, on or about the day of , A.D. 18 , at the Township of , unlawfully [take and convert one cow and one calf, the property of the said A. B.; or break and injure a waggon of the said A. B.; or falsely represent L. O. as fit to be trusted, the said C. D. at the same time knowing that the said L. O. was insolvent, whereby the said A. B. was induced to give him credit: or assault and beat the said A. B. (or as the case may be, stating the Tort sued for in concise language);] The said A. B. hath sustained thereby damages to the amount of , and claims the same of the said C. D.

A. B.

(18.) PARTICULARS IN ACTIONS AGAINST A CLERK OR BAILIFF AND HIS SURETIES.

Secs. 85, p. 14, and 74, p. 89; Rules 8, 4, 5, 6 &c.

No. , A.D. 18

A. B. of claims of C. D., Clerk (or Bailiff) of the Division Court for the County of , and

of E. F. of , and G. H. of (sureties for and parties with the said C. D. to a covenant for the due performance of the duties of his said office) the sum of for moneys had and received by the said C. D. as such Clerk (or Bailiff) as aforesaid, in a certain cause in the said Division Court, wherein the said A. B. was Plaintiff and one H. H. was Defendant, to and for the use of the said A. B., the payment whereof of the said C. D. unduly withholds. And also (stating in like manner any other similar claim)—[or the sum of for damages sustained by the said A. B. through the misconduct (or neglect) of the said C. D. in the performance of the duties of his said office: For that on the day of , at (describe in ordinary language the neglect or misconduct, whereby the damage was occasioned)].

(19.) APPLICATION OF BAILIFF FOR INTERPLEADER.
In the —— Division Court in the County of ——
BETWEEN A —— B ——, Plaintiff,
AND

C —— D ——, Defendant.

By virtue of a writ of execution (or "attachment") in this cause, dated the day of 18 , from this Court, I did, on the day of 18 , seize and take in execution (specify goods, chattels, etc., seized) as the property of the Defendant E. F., of the township of , etc., now claims the same as his property (or now claims the said and as his property) and that the value thereof is \$. You will therefore be pleased to issue an Interpleader summons to the Plaintiff and to the said E. F., according to the statute in that behalf.

To the Clerk of the said Court.

V —— W ——,

Dated, etc.

Bailiff.

(20.) LANDLORD'S CLAIM FOR RENT UNDER SEC. 176.

Whereas I have been informed that you have seized the goods of C. D., of , on his premises at , to satisfy a certain judgment of the Division Court in against the said C. D., at the suit of A. B.; I

Sections 175
and 176, pp.
84 and 85
notes (e) (a)
(b) (c): sec.
176, pp. 86,
89, note (h);
Rules 37, 38.

hereby give you notice that I am the landlord of the said premises, and that I claim \$ for rent now in arrear, being for one quarter (or as the case may be), and I require you to pay the same to me before you apply the proceeds of the sale of said goods or any part thereof to satisfy the said judgment.

Dated, etc.

E. F.,
Landlord of said Tenement.

To V. W.,
Bailiff of , etc.

(21.) PARTICULARS OF CLAIM ON INTERPLEADER.

In the — Division Court in the County of —

BETWEEN A — B —, Plaintiff,

AND

C — D —, Defendant,
E — F —, Claimant.

To whom it may concern.

E. F. of claims as his property the following goods and chattels, (or moneys, etc.) seized and taken in execution, (or attached) as it is alleged, namely, (specify the goods and chattels, or chattels or moneys, etc., claimed), and the grounds of claim are (set forth in ordinary language the particulars on which the claim is grounded, as how acquired, from whom, when, and the consideration paid or to be paid, and when), and this the said E. F. will maintain and prove.

E. F.

Sec. 175,
page 86.

Dated this day of 18

N. B.—If any action for the seizure has been commenced, state in what Court and how the action stands.

(22.) ORDINARY SUMMONS TO APPEAR.

In the — Division Court in the County of —

No. A.D. 18.

[Seal.] BETWEEN A — B —, Plaintiff,

AND

C — D —, Defendant.

[Stamp.] To C. D, the above named Defendant.

You are hereby [as before (or as often before) you were] summoned to appear, at the sittings of this Court to be holden at , in the Township of

Rules 9, 11,
15, 16 and
148; & N.B.
to Form 20,
p. 677.

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in the said County of _____, on the* _____ day of _____, A.D. 18, at the hour of _____ in the forenoon, to answer the above-named Plaintiff, in an action on contract, (or in an action for Tort) for the causes set forth in the Plaintiff's statement of claim herewith; and in the event of your not so appearing, the Plaintiff may proceed to obtain judgment against you by default.

Dated the _____ day of _____, A.D. 18.
By the Court,

X _____ Y _____

Clerk.

Claim \$
Costs, exclusive of mileage...

NOTICE.

Take notice, that if the Defendant desires to set-off Rule 128. any demand against the Plaintiff, (if the action be for Tort, omit the words in Italic) at the trial or hearing of this cause, (or) to take the benefit of any Statute of Limitations, or other Statute, notice thereof in writing, and if a set-off, containing the particulars of such set-off, (omit the words last in Italic, if the action be for Tort) must be given to the Plaintiff, or left at his usual place of abode, if living within the Division, or left with the Clerk of the said Court, if the Plaintiff resides without the Division, not less than six days before the day appointed for the said trial or hearing, and in case of set-off, a copy of the particulars of his set-off, and also a copy for the Plaintiff.

(23.) SPECIAL SUMMONS.

In the _____ Division Court in the County of _____, No. _____, A.D. 18.

[Seal.] BETWEEN A _____ B _____, Plaintiff,

AND

[Stamp.] C _____ D _____, Defendant.

To the above named Defendant.

The Plaintiff demands of you \$ _____ as shown by his claim herewith; you are notified that this summons is returnable on the eleventh (or sixteenth, or twenty-first, according to the residence of the Defendant) day after the

Rules 9, 12,
15, 16, 17, 18,
19 and 148.

* N. B. — The day of holding the Court must always, and in all forms, be stated at length in words, and not in figures.

day of the service hereof upon you; and you are to satisfy the said claim against you, or if you dispute the same or some part thereof, you are to leave with the Clerk within eight (or twelve, according to the residence of the Defendant) days after the day of such service the notice mentioned in warning No. 1 subjoined, otherwise after such return day has passed judgment may be given against you by default. In case you give such notice disputing the claim, the cause will be tried at the sittings of this Court, to be held at _____ in the said County, on or next after the day when the summons is returnable, at which time and place you are required to appear. And in default of your so appearing, the Plaintiff may proceed to obtain judgment against you.

Dated the _____ day of A.D. 18 _____
By the Court.

X _____ X _____
Claim.....\$ _____ Clerk.
Costs, exclusive of mileage...
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NOTICES AND WARNINGS TO THE DEFENDANT.

Rule 12.

WARNING No. 1.—If the Defendant disputes the Plaintiff's claim, or any part of it, he must leave with the Clerk within eight (or twelve) days after the day of service hereof, a notice to the effect that he disputes the claim, or if not the whole claim, how much he disputes, in default whereof final judgment may be signed for the whole claim, or such part as is not disputed (if the Plaintiff is content with judgment for such part) at any time within one month after the return of the summons.

Rule 12a.

WARNING No. 2.—If the Defendant desires to set off any demand against the Plaintiff at the trial or hearing of this cause, or to take the benefit of any statute of limitations, or other statute, notice thereof in writing must be given to the Plaintiff, or left at his usual place of abode, if living within the Division, or left with the Clerk of the said Court, if the Plaintiff resides without the Division, not less than six days before the day appointed for the said trial or hearing, and in case of set-off, a copy of the particulars of his set-off, and also a copy for the Plaintiff.

Rule 19.

The two next ensuing sittings of the said Court will be held as follows:—viz., at _____ o'clock A.M.

On the day of A.D. 18
On the day of A.D. 18

(24.) SUMMONS IN REPLEVIN.

In the — Division Court in the County of —

No. , A.D. 18

[Seal.] BETWEEN A — B —, Plaintiff,
AND

[Stamp.] C — D —, Defendant.

To V. W., the Bailiff of the said Court, and to C. D., Rules 9, 13,
the above-named Defendant. 41, 47, 48, 49
148.You the said Bailiff are commanded that without
delay, you cause to be replevied to the Plaintiff the
goods, chattels, and personal property described in the
statement of the Plaintiff's claim hereunto annexed, in
order that the Plaintiff may have his just remedy in
that behalf.See sections
5 and 6, pp.
209, 210;
notes (n) (o);
p. 212, note
(p).And you, the said Defendant, are hereby summoned
to be and appear at the next sittings of this Court, to
be holden at , in the County of , on
the day of , A.D. 18 , at the hour of Ten
o'clock in the forenoon, to answer the above-named
Plaintiff in an action of Replevin, for the causes
set forth in the Plaintiff's statement of claim hereunto
annexed; and in the event of your not so appearing,
the Plaintiff may proceed to obtain judgment against
you by default.N.B. at foot
of p. 377.

Dated the day of , A.D. 18 .

By the Court,

X — Y —, Clerk.

Claim for return of goods, and damages to... \$
Costs, exclusive of mileage.....

WARNINGS TO THE DEFENDANT.

1st. In case you do not appear to this writ at the
time specified in the summons, the Plaintiff may, on
filing the writ and affidavit of due service, proceed
thereon as if you had appeared, and obtain judgment
against you by default.Sec. 12, page
205, 206, 207.2nd. If you claim a right to the possession of the
goods by reason of any claim which you may have
urged under any statute, or to take the benefit of any
statute of limitations or other statute, notice thereof in
writing must be given to the Plaintiff, or least at his
usual place of abode, if living within the Division, or

Rule 128.

left with the Clerk of the said Court, if the Plaintiff resides without the Division, at least six days before the day appointed for the said trial or hearing.

(25.) INTERPLEADER SUMMONS TO CLAIMANT.

In the — Division Court in the County of —
[Seal.] BETWEEN A — B —, Plaintiff,

AND No. , A.D. 18

[Stamp.] C — D —, Defendant.
E — F —, Claimant.

Sec. 175.
Page 85.
Bates 31 and
148, & N.B.
at foot of
p. 377.

You are hereby summoned to appear at a Court, to be held on at the hour of A.M., at touching a claim made by you to certain goods and chattels [or moneys, &c., or securities (as the case may be)], viz.: (here specify) seized and taken in execution (or attached) under process issued out of this Court in this action, (or by a Justice of the Peace) and in default of your then establishing such claim, the said goods and chattels will be sold, (or the said moneys &c. paid and delivered over) according to the exigency of the said process: and take Notice, that you are required, six days before the day appointed for the said trial or hearing, to leave at the Clerk's office a particular of the goods and chattels, (or as the case may be) so claimed by you, and the grounds of your claim.

Given under the seal of the Court this day of
18

X. — Y —,
Clerk.

To E. F., the above named claimant.

(26.) SUMMONS TO PLAINTIFF ON INTERPLEADER.

In the — Division Court in the County of —

No. , A.D. 18

[Seal.] BETWEEN A — B —, Plaintiff

AND

[Stamp.] C — D —, Defendant.
E — F —, Claimant.

Sec. 175.
Page 85.
Bates 31 and
148, & N.B.
at foot of
p. 377.

Whereas E. F., of hath made a claim to certain goods, [or to certain securities or money (as the case may be)], viz.: (here specify) which have been seized and taken in execution (or attached) under and by

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virtue of process, issuing out of this Court, in this action (or by a Justice of the Peace); you are therefore hereby summoned to be and appear at a Court to be holden at on at the hour of , when the said claim will be adjudicated upon, and such order made thereupon, as the Court shall deem fit.

Given under the seal of this Court this day of 18

X — Y —

Clerk.

To A — B — ,

The above-named Plaintiff.

N.B.—The claimant is called upon to give particulars of his claim, which you may inspect on application at the office of the Clerk of the Court five days before the day of hearing.

(27.) APPLICATION FOR JUDGMENT SUMMONS.

To X. Y., Clerk of the — Division in the County of — Rule 7.
Be pleased to summon of etc., to answer according to the Statute in that behalf, touching the debt due me by the judgment of the said Court of the Division Court of the County of , on my behalf, a minute whereof is hereunto annexed.

A. B., Plaintiff.

(28.) SUMMONS TO DEFENDANT AFTER JUDGMENT.

In the — Division Court in the County of —
No. , A.D. 18

[Seal.] BETWEEN A — B — , Plaintiff.

AND

C — D — , Defendant.

To the above named Defendant.

Whereas on the day of A.D. 18 , the Plaintiff duly recovered judgment against you in said Court, holden in and for said Division, for \$ for debt, and \$ for costs of suit, which remains unsatisfied, you are therefore hereby, (in case of a second summons here insert the words "as before you were") summoned to appear at the next sittings of this Court, to be holden at on the day of , at the hour of , to be then and there examined by the Judge of the said Court, touching your estate and effects, and the manner and circumstances under which you contract.

Rules 7 and
148; & N.B.
at foot of
p. 377.

ed the said debt, (or incurred the damages or liability) which was the subject of the action, in which the said judgment was obtained against you, and as to the means and expectations you then had, and as to the property and means you still have, of discharging the said debt (or damages or liability), and as to the disposal you may have made of any of your property:—And take notice, that if you do not appear in obedience to this summons, you may, by order of this Court, be committed to the Common Jail of the County.

Given under the Seal of the Court this day of , 18 .

By the Court,

X — Y —

Clerk.

Amount of Judgment,.....\$

Costs of this summons,.....

(29.) SUMMONS TO DEFENDANT AFTER DEFAULT.

In the — Division Court in the County of —
[Seal.] BETWEEN A — B —, Plaintiff.

No. A.D. 18 . AND

[Stamp.] C — D —, Defendant.

Whereas at the sittings of this Court (or of, etc.), holden at the in the town of in the County of , on the day of , 18 , the above named Plaintiff obtained a judgment against you for the sum of , for debt, besides interest thereon and \$ costs to be paid , and which said judgment remained unsatisfied.

And whereas by a summons bearing date the day of , 18 , you were summoned to appear at the sittings of this Court, holden at the of in the County of , on the day of , 18 , at the hour of of the clock in the forenoon, to be then and there examined by the Judge of the said Court touching your estate and effects, and the manner and circumstances under which you contracted the said debt, which was the subject of the action in which the said judgment was obtained against you, and as to the means and expectations you then (at the time of contracting) had, and as to the property and means you still had (at the said last day aforesaid) of discharging the said debt, and as to the disposal you may have made of any of your property. (If debtor did not appear

Sec. 165,
pp. 80, 81,
note (a),
Rule 148; &
N. B. at foot
of p. 377.

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Cost of th

upon the first but did upon a second summons recite accordingly.)

And whereas upon your appearing thereto, and upon examination and hearing of both parties (or of you, and the evidence, *if any*), it appeared to the satisfaction of the said Judge, that you then had (or had since the judgment obtained against you, *as the case may be*) sufficient means and ability to pay the said debt and the interest thereon, and costs so recovered against you; and the said Judge did then and there order and direct that you should pay to the said Plaintiff the sum of \$ debt, and interest then accrued, and \$ costs, and also \$ costs of the said last mentioned summons, to be paid as follows, that is to say, the sum of \$ to be paid on the day of , 18 , the further sum of \$ to be paid on the day of 18 , or forthwith (*as the case may be*).

And whereas the Plaintiff alleges that you have not paid the and instalments of each, (or the said sums) so ordered to be paid.

You are therefore hereby summoned to appear at the next sittings of this Court, to be holden at the in the town of in the county of , on the day of , 18 , at the hour of of the clock in the forenoon, to be then and there examined by the Judge of the said Court touching your state and effects, and the manner and circumstances under which you contracted the said debt, which was the subject of the action in which the said judgment was obtained against you, and as to the means and expectations you then had, and as to the property and means you still have, of discharging the said debt, and as to the disposal you have made of any of your property, and as to the reasons why you have not paid to the Plaintiff the said and instalments of each, of the said debt, so ordered to be paid by you, as last above mentioned and recited, pursuant to the said order of the Judge.

And also to shew cause why you should not be committed to the common jail of the county for not complying with the said order of the said Judge.

Given under the seal of the Court this day of 18 .

By the Court,

X — Y —

Clerk.

Amount of judgment.....
" instalment.....
Cost of this summons.....

(30.) SUMMONS ON BEHALF OF EXECUTOR OR ADMINISTRATOR TO REVIVE A JUDGMENT.

In the — Division Court in the County of —
No. A.D. 18

[Seal.] BETWEEN A — B —, Executor of C.D.,
deceased, Plaintiff,

AND

[Stamp.] E — F —, Defendant.

To E. F., the above named Defendant.

Whereas on the day of A.D. 18, the above named C. D. duly recovered in said Court holden in and for said Division, judgment against you for \$ debt, and \$ costs of suit, which judgment, a transcript of which is hereunto annexed, still remains unsatisfied, and the said Plaintiff, as Executor aforesaid, claims to have execution thereof; you are hereby summoned to appear at the sittings of this Court, to be holden at on at in the forenoon, to show cause, if any you have, why the said Plaintiff, Executor as aforesaid, should not have execution against you of the said judgment, according to the force and effect of the said recovery; and, in the event of your not appearing, judgment will be entered against you by default.

By the Court,

X — Y —, Clerk.

Dated this day of 18
Claim: \$
Costs exclusive of mileage ..

(31.) SUMMONS ON A DEVASTAVIT.

In the — Division Court in the County of —
No. A.D. 18

[Seal.] BETWEEN A — B —, Plaintiff,

AND

C — D —, Executor (or Administrator) of E. F., deceased,
[Stamp.] Defendant.

To C. D., the above-named Defendant.

You are hereby [as before (or as often before) you were] summoned to be and appear at the sittings of

N.B.—This form may be altered to suit other facts showing a change of the parties entitled to execution, which make a revival necessary.

Rules 64
and 148.
This is in-
tended to be
used after
judgt. agst.
Exr. or Adr.
but is in the
nature of a
new suit.

this Court, to be holden at _____, on the _____ day of _____, A.D. 18_____, at the hour of _____ in the forenoon, to answer the above-named Plaintiff in an action, for that you, the Defendant, have withheld and wasted divers goods and chattels, which were the property of E. F., deceased, at the time of his death, and which came into the hands of you the Defendant, as Executor (or Administrator) of the said E. F., to be administered, whereby a certain judgment recovered against you by the Plaintiff in this Court on the _____ day of _____ A.D. 18_____, for \$_____ remains unsatisfied; and in the event of your not appearing, the Plaintiff may proceed to obtain judgment against you by default.

See N.B. at
the foot of
p. 377.

Dated this _____ day of _____, 18_____. X_____ Y_____

Clerk.

(32.) SUGGESTION OF DEVASTAVIT ON ORIGINAL SUMMONS.

(Commence with Form of Summons, as in "Ordinary Summons to Appear," but naming Defendant as Executor or Administrator, and adding after the word "default") and the Plaintiff alleges that you, the Defendant, have money, goods and chattels, which were the property of the said C. D., deceased, at the time of his death, and which came to your hands as such executor (or administrator) to be administered; and if not, that you have withheld or wasted the same.

Rule 64.
This is intended to be used at the commencement of proceedings against Exr. or Admr.

(33.) SUMMONS TO REVIVE JUDGMENT AGAINST AN EXECUTOR.

In the _____ Division Court in the County of _____
No. _____, A.D. 18_____

[Seal.] BETWEEN A_____ B_____, Plaintiff,

AND

[Stamp.] C_____ E_____, Executor of E. F.,
deceased, Defendant.

To C. E., the above-named defendant.

Whereas on the _____ day of _____ A.D. 18_____, the Plaintiff duly recovered in the said Court, holden in _____ and 148; and for the said Division, judgment against the said E. F., in his lifetime, for \$_____ for debt, and \$_____ costs of suit, which judgment, a transcript whereof is hereto

Rules 157
N.B. at foot
p. 377.

GENERAL FORMS OF JULY, 1800.

annexed, still remains unsatisfied; and the said Plaintiff claims to have execution thereof against you, as Executor of the said E. F.: you are hereby summoned to appear at the sittings of this Court, to be holden at , on , at the hour of , to show cause, if any you have, why the said Plaintiff should not have execution of the said judgment against you, as Executor as aforesaid; to be levied of the goods and chattels of the said E. F., deceased, in your hands to be administered; and in the event of your not appearing, judgment herein will be entered against you by default.

Dated this day of , 18 .

By the Court.

X — Y — ,
Clerk.

Amount claimed.....\$
Costs exclusive of mileage...

N.B.—This form may be altered to suit other facts showing a change of the parties liable to execution, which make a revival necessary.

(34.) SUMMONS TO EXECUTOR OR ADMINISTRATOR, WHERE PLAINTIFF INTENDS TO APPLY TO THE COURT ALLEGING THAT ASSETS HAVE COME TO THE DEFENDANT'S HANDS SINCE JUDGMENT.

In the — Division Court in the County of —

[Seal.] BETWEEN A — B — , Plaintiff,
AND

No. , A.D. 18 .

C — D — , Executor (or Administrator) of E. F., deceased, Defendant.
[Stamp.]

Rules 72 and
148; and
N.B. at foot
of p. 877.

The Plaintiff having learned that the property of the said deceased has come to your hands as Executor (or Administrator) since the judgment herein, to be administered (and that you have withheld and wasted the same), intends to apply at the next sitting of this Court, to be holden at on the day of , at the hour of , for an order that the debt and costs be levied of the goods and chattels of the said deceased, if you have so much thereof to be administered (and that if you have not, then that it shall be levied of your own proper goods and chattels), and that the costs be levied of your proper goods and chattels.

You are, thereupon, hereby summoned to appear at

the said Court, at the time and place aforesaid, to answer touching the matter aforesaid.

Dated this day of , 18

To

X — Y —

Clerk.

The above named Defendant.

(35.) ORDER OF REFERENCE.

In the Division Court in the County of

BETWEEN A — B —, Plaintiff,

AND

[Stamp.] C — D —, Defendant.

By consent of the Plaintiff and Defendant (or agents if so) given in open Court (or produced in writing to the Court) it is ordered that all matters in difference in this cause (and if consented to, add, "and all other matters within the jurisdiction of this Court in difference between the said parties") be referred to the award of so as said award be made in writing, ready to be delivered to the parties entitled to the same, on or before the day of ; and that the said award may be entered as the judgment in this cause (add any terms that the Judge may prescribe, or the parties may agree upon).

Given under the seal of the Court this day of , 18

X — Y —

Clerk.

(a) APPOINTMENT OF UMPIRE TO ENDORSED.

We hereby appoint , of, &c., as a third arbitrator with us for determining the matters in dispute within referred to us.

Or.—We hereby appoint , of, &c., as an umpire as to certain differences of opinion which have arisen between us as arbitrators of the matters within referred.

(b) APPOINTMENT FOR MEETING ON REFERENCE.

In the, &c.

B. } I appoint the day of next, at the hour of , at for proceeding on this reference.

Secs 109 to 112, pages 55 to 57 inclusive.

To (both parties). , Arbitrator.

(c). ENLARGEMENT TO BE ENDORSED.

Secs. 109,
110, 111, 112,
page 55,
notes (n) (o)
(v).

I enlarge the time for making my award respecting the matters referred to me by the within order of reference, until the day of , 18 . , Arbitrator.

Dated, &c.

(36.) AWARD.

The award, when endorsed on the order, may be in the following Form.

Secs. 100,
110, 111, 112,
pages 55, 56
and 57, Rule
150.

After hearing and considering the proofs laid before me (or us) in the matter of the within reference, and in full determination of the matters to me (or us) referred, I (or we) do award that the within named A. B. is entitled to recover from the within named C. D. the sum of , together with the costs of this suit, and also the costs of this reference (or as the case may be), and that the same shall be paid by the said C. D. within days, and that judgment be entered in the within mentioned case accordingly.

Dated this day of , 18 .

See Form
post 109.

Witness

Arbitrator.

(Add affidavit of caption.)

(37.) SUMMONS TO JURORS.

[Seal.]

Sec. 124,
page 60,
note (y).

In the Division Court in the County of . You are hereby summoned to appear and serve as a Juror in this Court, to be holden at on , at the hour of . Herein fail not at your peril.

Given under the seal of the Court this day of , 18 .

To

X — Y — , Clerk.

(38.) SUMMONS TO WITNESS.

In the
[Seal.]

Division Court in the County of .
BETWEEN A — B — , Plaintiff,

AND

C — D — , Defendant.

Sec. 97, pp.
48, 49; note
(x) and (y).

You are hereby required to attend at the sittings of the said Court, to be holden at on the 18 .

at the hour of in the forenoon, to give evidence in the above cause, on behalf of the above named [and then and there to have and produce (*state particular documents required*) and all other papers relating to the said action, in your custody, possession, or power.]

Given under the Seal of the Court this day of

18

X — Y —,
Clerk.

(39.) SUMMONS TO WITNESS TO APPEAR BEFORE ARBITRATOR.

In the Division Court in the County of
[Seal.] BETWEEN A — B —, Plaintiff,
AND

C — D —, Defendant.

You are hereby required to attend before the Arbitrator (or Arbitrators) to whom this cause stands referred, at on the day of A.D. 18 at o'clock of that day, being the time and place appointed by the said Arbitrator for a meeting upon the said reference, to give evidence in the above cause on behalf of the above named and then and there to have and produce (*state the particular documents required*) and all other papers relating to the said action, in your custody, possession, or power.

Given under the Seal of the Court this day of
A.D. 18

To X — Y —,
Clerk.

GARNISHEE PROCEEDINGS TO JUDGMENT.

(40.) AFFIDAVIT FOR ORDER TO GARNISH DEBT.

In the Division Court in the County of
BETWEEN A — B —, Plaintiff,
AND

C — D —, Defendant.

I, A. B., of the of in the County of the Plaintiff in this suit, (*if the affidavit be made by the Plaintiff's attorney or agent make the necessary alteration*), make oath and say, that judgment was recovered in this cause against the above named Defendant on the day of A.D. 18 for the sum of \$ debt.

Sec. 104, p.
52, sec. 6, p.
281, note (o)
Rules 51 and
183.

and costs, (or according to the judgment,) and that the same remains wholly unsatisfied, (or that \$., part thereof, yet remains unsatisfied.)

That I have reason to believe, and do believe, that E. F., residing at ., within this Province is, (or if the person indebted to the Defendant be not known say "that one or more persons residing in this Province, whom I am unable to name, are") indebted to the Defendant in the sum of \$., (or if the amount be unknown say "in an amount which I am unable to name,") for goods sold and delivered by the Defendant to the said E. F., (or otherwise according to the nature of the debt sought to be garnished.)

Sworn before me at the . of

in the County of this
day of A.D. 18 .

X—Y— Clerk.

A—B—

(41.) JUDGE'S ATTACHING ORDER.

In the —— Division Court in the County of ——
[Stamp.] Between

A—B—, Plaintiff,

and

C—D—, Defendant,

Judgment entered
in the Division
Court in the County
of

on the . day of ., A.D. 18 .

Amount unsatisfied \$.

On application of the Plaintiff and upon reading his affidavit, [or the affidavit of A. B., his attorney (or agent, as the case may be,)] it is ordered, that all debts now owing to the Defendant from any party in this Province, whether due, or accruing due, be and the same are hereby attached, to satisfy the judgment in this cause.

Dated the . day of . A.D. 18 .

Judge.

(Add warning as in next Form.)

(42.) WARNING TO GARNISHEE.

To D. E., Garnishee,

Rules 52, 53 and 62. You are hereby notified that from and after the time of the service of this ("order" or "summons") on you,

all de
name
any o
order
liable

(43.)

[Seal.]

No.

[Stamp]

A.

C.

You,
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A.D. 18
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(44.) S

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all debts due or accruing due, from you to the above named C. D., are attached, and if you pay the same to any one other than to the person holding the proper order to receive the same, or into Court, you will be liable to repay it, in case the Court or Judge so order.

(43.) SUMMONS TO GARNISHEE AND PRIMARY DEBTOR
AFTER JUDGMENT.

[Seal.] In the —— Division Court in the County ——
of

No. , A.D. 18

[Stamp.] Between

A. B., Primary Creditor,	Judgment recovered on the day of A.D. 18 in the Division Court in the County of
and	
C. D., Primary Debtor,	
and	
E. F., Garnishee,	Amount unsatisfied, \$

You, the above named Garnishee and the Primary Debtor, are hereby summoned to appear at the sittings of this Court, to be held at on the day of A.D. 18 (or before the Judge presiding at on the day of A.D. 18), at of the clock in the noon, to state and show whether or not you the said Garnishee owe any, and what debt to the above named Primary Debtor, and why you should not pay the same into Court, to the extent due on the above named judgment, to satisfy the same; and take notice that if you have any set-off or other statutable defence, as between you and the Primary Debtor, you must give notice thereof, to the Primary Creditor, six days before the day you are so required to appear. You or any one interested, may also shew any other cause why the said debt should not go to satisfy the said judgment.

Sub-sec. 4 of
sec. 6, p 283,
note (b),
Rules 52,
to 62.

Dated the day of , A.D. 18

Add warning
(Form 42).
See Rule 52.

X —— Y ——
Clerk.

(44.) SUMMONS TO PRIMARY DEBTOR (BEFORE JUDGMENT)
AND GARNISHEE.

In the —— Division Court in the County of ——
No. , A.D. 18

Between

A. B., Primary Creditor,
 [Seal.] and
 C. D., Primary Debtor,
 [Stamp.] and
 E. F., Garnishee.

The Primary Creditor claims from the Primary Debtor the amount of the annexed account:

(giving the account or claim in detail.)

Sec. 7; page
 285 & notes;
 Rules 52,
 to 62.

You, the above named Primary Debtor, are hereby summoned to appear at the sittings of this Court, to be held at on the day of A.D. 18 (or at on the day of A.D. 18 before the Judge then and there presiding) to answer the Primary Creditor, who sues you for the recovery of the annexed claim and you, the Garnishee, are required to appear at the same time and place to state and show whether or not you owe any and what debt to the Primary Debtor, and why you should not pay the same into Court, to the extent of the Primary Creditor's claim in satisfaction thereof; and take notice, that if either of you have any set off, or other statutory defence, as between you, or as between the said Primary Debtor and the Primary Creditor, you must give notice of all such defences to the Primary Creditor not less than six days before you are so required to appear. You and all others interested may also show any other cause why the debt owing from the Garnishee should not be paid and applied to satisfy the said claim of the Primary Creditor.

Add warning
 (Form 42).
 See Rule 52.

Dated the day of A.D. 18.

X — Y —
 Clerk.

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(46.) On
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(45.) MINUTE IN PROCEDURE BOOK OF JUDGMENT AGAINST
 GARNISHEE ON JUDGMENT ALREADY RECOVERED.

Judgment entered on the day of in the
 Division Court in the County of
 Amount unsatisfied, \$

Rules 62 and
 149.

On hearing all parties, [or on hearing the above named (the parties appearing), the above named having made default, it is adjudged that the Garnishee is indebted to the Primary Debtor in \$ now due (or coming due as follows,) which (or \$ of which) ought to be applied in satisfaction of the said judgment, and that the said Primary Creditor do recover against the Garnishee, for levying whereof execution may issue at any time, (or

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 primary
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 Act, or
 the garn
 be given
 repayme

if the debt be not due, or time for payment be given, add) after from this date, unless the Garnishee shall sooner pay the same into Court, to satisfy the said judgment.

Entered the day of A.D. 18

(46.) MINUTE IN PROCEDURE BOOK OF JUDGMENT AGAINST PRIMARY DEBTOR AND AGAINST GARNISHEE.

On hearing all parties [or on hearing the Primary Creditor (or as the case is) the Primary Debtor, (or as the case is) having made default]. It is adjudged, 1st, that the Primary Debtor is indebted to the Primary Creditor in \$ and \$ costs. 2nd, that the Garnishee is indebted to the Primary Debtor in \$ which, (if the Garnishee's debt be larger than the Primary Creditor's claim, say, "to the extent of the two first mentioned sums") ought to be applied in satisfaction thereof. 3rd, that the Primary Creditor do recover against the Garnishee the said sum of \$ in days (as time may be given for payment or debt becomes due) in satisfaction as aforesaid.

(47.) MINUTE OF JUDGMENT IN FAVOR OF GARNISHEE.

On hearing all parties (or on hearing the Garnishee, the Primary Creditor having made default), it is adjudged that the Garnishee is not indebted to the Primary Debtor as claimed by the Primary Creditor, and that the Primary Creditor pay the Garnishee \$ for his costs, to be paid in days.

(47a.) BOND UNDER SEC. 15 OF THE ACT OF 1869.

(Commencement and conclusion same as in Replevin bond, condition as follows.)

Whereas in a certain garnishee proceeding under the Act 32 Vic. cap. 23, wherein the said A. B. is primary creditor, C. D. primary debtor, and E. F. garnishee, a certain debt of \$ due from the garnishee to the primary debtor, has been garnished to answer the debt of the primary creditor, and whereas the Judge of the said Court acting under the 15th section of the said Act, ordered that upon payment of the said debt by the garnishee to the primary creditor, security should be given by or on behalf of the primary creditor for the repayment thereof into court by the primary creditor.

8 in

Sec. 15, page
289, note (m)
Form 117,
post.

Now the condition of this obligation is such that if the above bounden A. B. do pay into Court the said debt, in case a proper order shall be made for such repayment, within five days after notice of such order, then this obligation to be void, else to remain in full force.

(48.) CLERK'S MEMORANDUM OF NON-APPEARANCE OF GARNISHEE, (C. L. P. ACT, SEC. 296.)

Memorandum.

Secs. 292, et seq., pp. 215 et seq., Rule 63.

I, X. Y., Clerk of the Division Court in the within order named, attended this day of 18, at the place within mentioned, from o'clock in the noon (as the case may be), till past in the noon (as the case may be) of the same day, and the said J. K. (Garnishee) did not appear before me according to the said order.

X — Y —, Clerk.

(49.) MEMORANDUM OF ADMISSION OF DEBT, WHEN SIGNED BY GARNISHEE (C. L. P. ACT, SEC. 296.)

Memorandum.

Secs. 292 et seq., pp. 215 et seq., Rule 63.

On this day of 18, the within named (Garnishee) appeared before me according to the within order,* and admitted that he was and is indebted to the within named G. H. (judgment debtor) in the sum of \$ (if the whole debt be not admitted, add, "and no more.") (If the garnishee be willing to sign the admission, add, "and signed the subjoined admission in my presence.")

X — Y —, Clerk.

Secs. 292, et seq., pp. 215, et seq., Rule 63.

I, J. K., within named, admit that there is a debt of \$ (if the whole debt be not admitted, add, "and no more") due from me to the within named (Judgment debtor).

J. K. (Garnishee's signature).

(50.) MEMORANDUM, WHERE GARNISHEE DENIES DEBT (UNDER SEC. 296, C. L. P. ACT.)

Secs. 292, et seq., pp. 215, et seq., Rule 63.

On &c. (as in previous form to the asterisk*), and disputes the debt claimed to be due from him to the within named

(Judgment debtor.)

If the Garnishee be willing to sign the denial of debt, add "and signed the subjoined denial of debt in my presence.")

I dispute the debt claimed to be due from me to
within named

X. Y.
J. — K.,
(Garnishee's signature.)

MINUTES OF JUDGMENT IN PROCEDURE BOOK.

(51.) OF JUDGMENT AGAINST DEFENDANT FOR DEBT OR
DAMAGES.

Judgment for the Plaintiff* for \$ and \$ costs; Rule 149.
to be paid in days (when an excess has been abandoned,
add, "being in full discharge of his cause of action
set forth in the claim.")

(52.) OF JUDGMENT UNDER 32 VIC., CAP. 23, SECS. 2 & 3.

The Defendant, having been served with special summons, and particulars of claim, and not disputing the same (or not disputing \$ part thereof, and Plaintiff being content with judgment or such part,) it is adjudged that Plaintiff recover \$ for debt, and \$ costs.

Dated day of , 18 .

(53.) OF JUDGMENT WHERE SOME DEFENDANTS HAVE
BEEN SERVED WITH SPECIAL SUMMONS, AND OTHERS
HAVE CONFESSED.

The Defendant, C. D., having been served with special summons and particulars of claim, and not disputing \$ part thereof, and the Plaintiff being content with judgment for such part, and the Defendants E. F. and G. H. having confessed the same sum as due to the Plaintiff, it is adjudged that the plaintiff recover \$ for debt and \$ for costs.

(54.) OF JUDGMENT OF NONSUIT OR DISMISSAL FOR WANT
OF PROSECUTION.

Judgment of Nonsuit, (or that the cause be dismissed) (if costs, &c., ordered, add, and the Plaintiff

* Add, "On verdict by jury," if such be the fact.

pay \$ for Defendant's costs, or \$ for Defendant's trouble, and \$ for his costs; to be paid in days.)

(55.) OF JUDGMENT ON AWARD.

Sec. 111, p.
56; Rules
149 and 150.

Judgment for the Plaintiff (or Defendant) for \$ costs (or for the sum of and costs) pursuant to award; to be paid in days.

(56.) OF JUDGMENT FOR DEFENDANT.

Rules 149
and 150.

Judgment for the Defendant* (or for the Defendant for \$ costs; or \$ for his trouble and loss of time, and also \$ for his costs; to be paid forthwith.)

(57.) OF JUDGMENT FOR DEFENDANT ON SET-OFF, WHERE SET-OFF IN PART SATISFIED.

Rule 152.

It appearing that the Defendant's set-off exceeds the Plaintiff's claim as proved, by over \$100, it is adjudged that the Plaintiff's claim, proved at \$ be discharged, and that the Defendant's set-off to \$ be satisfied, and further, that the Defendant do recover against the Plaintiff \$ for his costs to be paid in days.

(58.) OF JUDGMENT FOR DEFENDANT FOR BALANCE OF SET-OFF.

Sec. 17, page
200, Rule
152.

It appearing that the Defendant's set-off exceeds the Plaintiff's claim; it is adjudged that the Plaintiff's claim, proved at \$, be discharged, and that the said set-off as to that amount be satisfied, and further, that as to \$, residue of such set-off, the Defendant have judgment for the same, together with \$ for his costs, to be paid in days.

(59.) OF ORDINARY JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR.

Rule 140.

Judgment for Plaintiff for \$ and \$ costs, to be paid in days, to be levied of the goods and chattels of the deceased; failing such goods, the costs to be levied of the Defendant's proper goods and chattels.

* Add "on verdict by Jury," if such be the fact.

(60.) OF JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR, WHO HAS WASTED ASSETS.

Judgment for Plaintiff for \$ and \$ costs, to Rule 65, be paid in days, to be levied of the goods and chattels of the deceased; failing such goods, then the whole (or the sum of \$ and the said costs) to be levied of the Defendant's proper goods and chattels; the Defendant having wasted the goods of the deceased to that amount.

(61.) OF JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR, WHO HAS DENIED HIS REPRESENTATIVE CHARACTER, OR PLEADED A RELEASE TO HIMSELF.

Judgment for Plaintiff for \$ and \$ costs, to Rule 66, be paid in days, to be levied of the goods and chattels of the deceased; failing such goods, then to be levied of the Defendant's proper goods, the Defendant having pleaded a release to himself, (or "the Defendant having denied his representative character") and this plea being found against him.

(62.) OF JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR WHO ADMITS HIS REPRESENTATIVE CHARACTER, AND DENIES THE DEMAND.

The same as in ordinary judgment against Executor or Administrator (Form 59.) Rule 67, Form 59, ante.

(63.) OF JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR, WHERE HE ADMITS HIS REPRESENTATIVE CHARACTER, BUT DENIES THE DEMAND, AND ALLEGES TOTAL OR PARTIAL ADMINISTRATION OF ASSETS: AND THE PLAINTIFF PROVES HIS DEMAND, AND THE DEFENDANT PROVES ADMINISTRATION.

Judgment for the Plaintiff for \$ debt, and also Rule 68, \$ costs, to be paid in days; the Plaintiff's demand which was denied, having been proved and full (or partial) administration also having been proved, which was denied, the said costs to be levied of the goods and chattels of the deceased; failing such goods, then of the Defendant's proper goods; the said debt to be levied of the goods and chattels of the deceased, hereafter to come to the Defendant's hands to be administered; and ordered that \$ the costs of proving such administration, be paid by the Plaintiff in days.

(64.) OF JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR, WHERE THE DEFENDANT ADMITS HIS REPRESENTATIVE CHARACTER, BUT DENIES THE DEMAND, AND ALLEGES TOTAL OR PARTIAL ADMINISTRATION OF ASSETS, AND THE PLAINTIFF PROVES HIS DEMAND, AND THE DEFENDANT DOES NOT PROVE ADMINISTRATION.

Rule 69.

Judgment for Plaintiff for \$ debt, and also \$ costs, to be paid in days, to be levied of the goods and chattels of the deceased : failing such goods, then the said costs to be levied of the Defendant's proper goods, and the debt to be levied of the goods and chattels of the deceased, hereafter to come to the Defendant's hands to be administered, the Plaintiff's demand having been proved, which was denied, and administration, which was alleged, not having been proved.

(65.) OF JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR, WHO ADMITS HIS REPRESENTATIVE CHARACTER, AND THE PLAINTIFF'S DEMAND, BUT ALLEGES A TOTAL OR PARTIAL ADMINISTRATION OF ASSETS, AND PROVES THE ADMINISTRATION.

Rule 70.

Judgment for Plaintiff for \$, to be paid in days; to be levied of the goods and chattels of the deceased, hereafter to come to the Defendant's hands to be administered ; the debt not being denied, and full (or partial) administration, which was denied, having been proved, Ordered that the Plaintiff pay \$ for the Defendant's costs in days.

(66.) OF JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR, WHO ADMITS HIS REPRESENTATIVE CHARACTER, AND THE PLAINTIFF'S DEMAND, BUT ALLEGES A TOTAL OR PARTIAL ADMINISTRATION OF ASSETS, AND DOES NOT PROVE THE ADMINISTRATION.

Rule 71.

Judgment for Plaintiff for \$ debt, and \$ costs, to be paid in days; full (or partial) administration, which was alleged, and disputed, not having been proved, Ordered that the said sums be levied of the goods and chattels of the deceased ; failing such goods then the debt of the goods and chattels, hereafter to come to the Defendant's hands to be administered, and the costs to be levied of the Defendant's proper goods.

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(67.) OF JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR ON DEVASTAVIT AFTER JUDGMENT.

Judgment that the Defendant has wasted goods and chattels of A. B., deceased, to the sum of \$, whereby a judgment recovered against him by the Plaintiff in the Division Court in the County of , on the day of 18 , remains unsatisfied; and that the Plaintiff now recover against the Defendant the first named sum, and also \$ costs; to be paid in days.

(68.) OF JUDGMENT TO REVIVE A JUDGMENT AGAINST AN EXECUTOR.

Judgment for the Plaintiff, that he have execution against the Defendant, as executor of E. F., deceased, of a judgment of this Court (or of the Division Court, etc.) whereby the plaintiff, on recovered against the said E. F. in his life-time the sum of \$ to be levied of the goods and chattels of the said deceased, in the hands of the said Defendant to be administered.

(69.) OF JUDGMENT FOR EXECUTOR TO REVIVE A JUDGMENT.

Judgment for Plaintiff, that he have execution against the Defendant of a judgment of this Court (or of the Division Court, etc.) whereby the said C. D. in his lifetime, on recovered against the said Defendant the sum of \$

(70.) OF JUDGMENTS IN REPLEVIN.

For Plaintiff, (same as general form of judgment for Plaintiff for damages and costs, No. 51).

Rule 149,
Form 51,
ante.

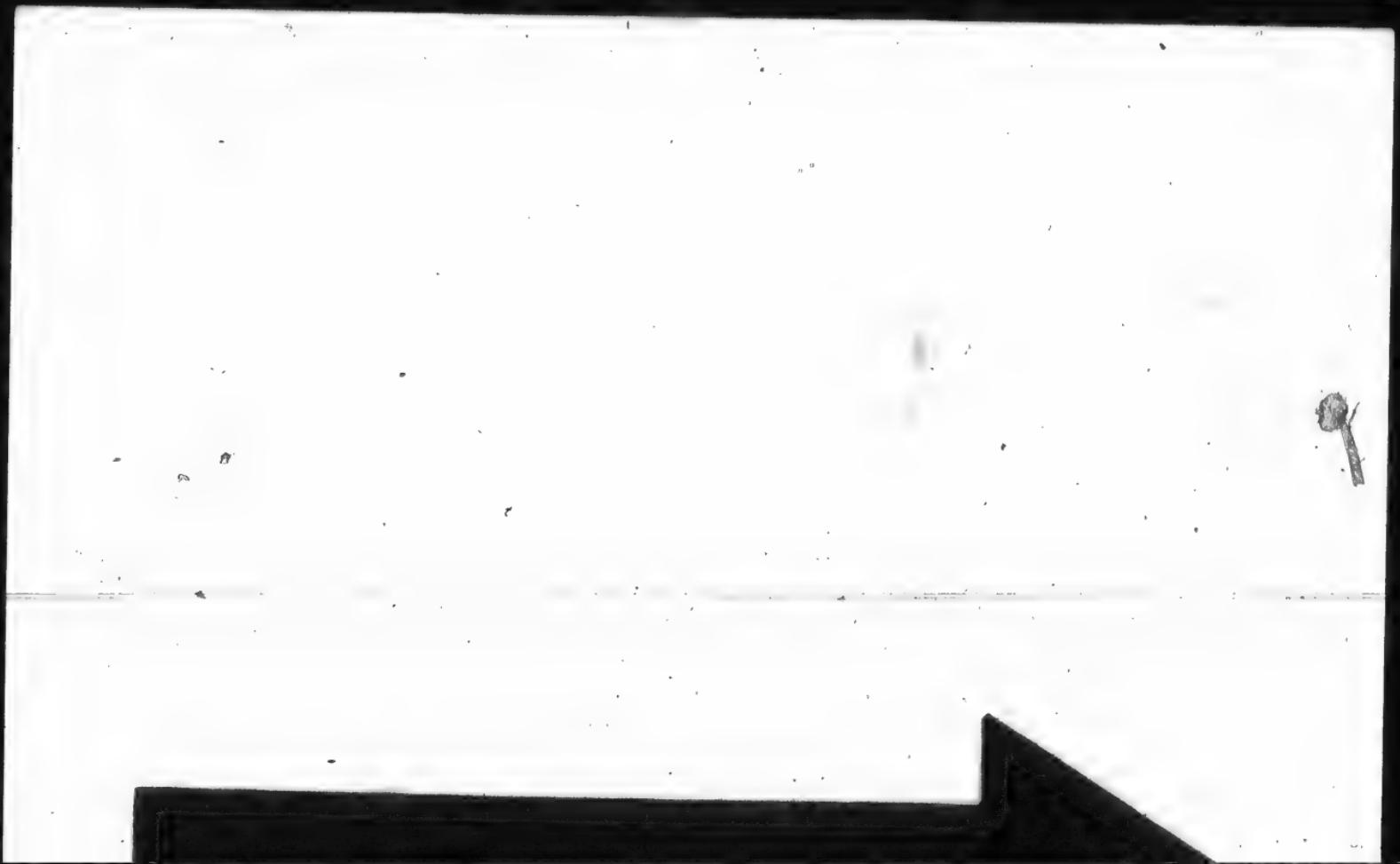
For Defendant in Replevin for rent, Adjudged that the Plaintiff do return to the Defendant the goods and chattels (or "cattle," stating the particulars thereof) and pay \$ for costs in days [or, adjudged that the amount due for rent in arrear from the Plaintiff to the Defendant is \$ and that the goods and chattels (or "cattle") were of the value of \$ and that the Plaintiff do in days, pay the said sum of \$ and also the sum of \$ for costs of suit].

Rules 42 et
seq., and
Rule 149.

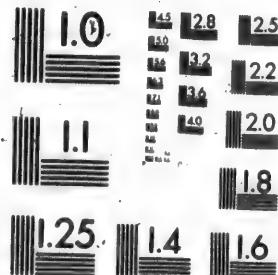
For Defendant in Replevin of cattle damages feasant, Adjudged that the Plaintiff do return to the Defendant

Rules 48 and
149.





**IMAGE EVALUATION
TEST TARGET (MT-3)**



23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

**Photographic
Sciences
Corporation**



the cattle (*here specify the cattle*), or do pay in days the sum of \$ which is adjudged as the damages sustained by the Defendant, and that the Plaintiff do pay within the time aforesaid \$ for costs.

Rules 44 and
149.

For Defendant where Replevin is not for rent nor for damage feasant, Adjudged that the Plaintiff do return to the Defendant the cattle (or "goods and chattels," *as the case may be, stating the particulars thereof*) forthwith (or in days), and that the Plaintiff do pay the Defendant in days, \$ for costs of suit* and \$ for damages sustained by the Defendant by reason of the issuing of the Writ of Replovin in this cause.

If no damages are awarded then omit from last Minute all the words from the asterisk.

Rule 149.

(71.) OF ADJUDICATION ON INTERPLEADER.

Adjudged, that the goods for the goods, chattels and moneys, *or* proceeds of the goods, etc. (*as the case may be*) mentioned in the Interpleader Summons [*if only for a part of the goods, &c., add the words, "hereafter mentioned, that is to say (here enumerate them)"*], are (*or are not*) the property of E. F. (the *Claimant*), or that rent to the amount of \$ is due to E. F. (the *Claimant*); Ordered that \$, the costs of this proceeding be paid by (*here insert such order as to the costs or the subject in dispute, if any, as the Judge shall have made*), in days.

(72.) OF IMPOSITION OF A FINE ON A JUROR, FOR NON-ATTENDANCE.

Sec. 126, p.
61, Rule 149.

Adjudged that G. H., was duly summoned to attend this Court now holden, as a Juror,—that he hath made default therein,—that he pay a fine of \$, for such default, in days (*or forthwith*).

(73.) OF ORDER FOR IMPOSITION OF FINE FOR CONTEMPT.

Sec. 182, p.
91, note (m);
Sec. 184, p.
92, note (o);
Rule 149.

It is adjudged, that E. F., at the sittings of this Court now holden, in open Court is guilty of a contempt of the said Court, by wilfully insulting *Judge (or Deputy or Acting Judge) of the said Court* [*or "in view of the Court, by wilfully insulting Clerk (or Bailiff) of the said Court, during his attendance at such Court" (or "by wilfully interrupting the*

proceedings of that the said E. F. in such offence, and to the Common less such fine, th ing the committm

(74.) OF

Adjudged that as a witness, in here this day [*and that payment (or expenses was made [or having appeared and give evidence &c.)*]. (*Or Adjudged Court, now holden this cause, did give evidence.*) And pay a fine of \$ days (*or for part of the said Plaintiff (or Defendant neglect or refusal*

(75.) POSTPONEMENT

In the ————— D
BETWEEN

At the sittings of
18 , at
on to be heard, the
Judge in open Court
was postponed by
18 , at the hour
this Court; the con-
sidered by the Judge
Judgment).

The Clerk will
their agents, if pr
according to the S

Dated &c.

proceedings of the said Court")]: And it is ordered, that the said E. F. forthwith pay a fine of \$, for such offence, and, in default of payment, be committed to the Common Jail of this County, for days, unless such fine, the costs herein, and the expense attending the commitment, be sooner paid.

—
(74.) OF IMPOSITION OF FINE ON WITNESS.

Adjudged that H. H. was duly summoned to appear as a witness, in this action, at the sittings of this Court here this day [and also to produce (as the case may be)] that payment (or a tender of payment) of his reasonable expenses was made to him,—and that he did not appear [or having appeared, did wilfully refuse to be sworn, and give evidence in this action (or to produce such, &c.)]. (Or Adjudged that H. H. being before this Court, now holden and called upon to give evidence in this cause, did wilfully refuse to be sworn and give evidence.) And further adjudged that the said H. H. pay a fine of \$, for such neglect (or refusal) in days (or forthwith); And that the sum of \$, part of the said fine, be paid by the Clerk to the Plaintiff (or Defendant) being the party injured by such neglect or refusal.

—
(75.) POSTPONED JUDGMENT UNDER SEC. 106.

In the —— Division Court in the County of ——

BETWEEN A—— B——, Plaintiff,

AND

C—— D——, Defendant.

At the sittings of this Court held on the day of Sec. 106,
18 , at in the said Division, this case came page 53.
on to be heard, and after the hearing thereof by the Judge in open Court the giving of Judgment thereupon was postponed by the Judge till the day of
18 , at the hour of at the office of the Clerk of this Court; the case having since been maturely considered by the Judge. It is adjudged &c. (according to Judgment).

The Clerk will read this decision to the parties or their agents, if present, and forthwith enter Judgment according to the Statute in that behalf.

Dated &c.

—
—
—
Judge.

(76.) ORDER FOR NEW TRIAL.

In the —— Division Court in the County of ——
 [Stamp.] BETWEEN A —— B ——, Plaintiff.
 AND
 C —— D ——, Defendant.

Rule 142.

It is ordered, that the judgment rendered in this cause, and all subsequent proceedings be set aside; and a new trial be had between the parties on (set out the terms or conditions, if any, on which the order is made.)

Dated , 18 . —————— Judge.

EXECUTIONS.

(77.) AGAINST GOODS OF DEFENDANT.

In the —— Division Court in the —— County of ——
 No. , A.D. 18 .

[Seal.] BETWEEN A —— B ——, Plaintiff.
 AND
 C —— D ——, Defendant.

Sec. 135, pp. 64 and 65, and notes.

Whereas on the day of A.D. 18 , the Plaintiff, duly recovered in said Court, holden in and for said Division, judgment against the Defendant for \$ for debt, and \$ for costs of suit, which remains unsatisfied (when the judgment has been revived, add, "and on the day of A.D. 18 , the said judgment was duly revived,") you are hereby required to levy of the goods and chattels of the Defendant in the said County (not exempt from execution), the said moneys amounting together to the sum of \$ and your lawful fees; so that you may have the same within thirty days from the date hereof, and pay the same over to the Clerk of this Court for the Plaintiff.

Given under the seal of the Court this day of A.D. 18 .

X —— Y ——, Clerk.

To V. W.

Bailiff of said Court.

Judgment \$
 Interest
 Subsequent costs
 This execution

Levy the sum of \$, and your lawful fees upon this precept.

In the ——
 No. , A.D.

BETW

[Seal.]

Whereas on said Court, he was given for judgment of defendant's trouble, satisfied—here transposing the where they occu

(79.) ON
 In the ——
 No. , A.D.
 BETW

[Seal.]

Whereas at day of judged that the against the above residue of his together with unsatisfied, you directed in last

(80.) EXECUTION
 JUDGMENT
 DING IN A

In the ——
 No. , A.D. 18
 [Seal.]

Whereas the to the Defendant said Court holden in and for the said Court the Plaintiff under the provi

(78.) AGAINST GOODS OF PLAINTIFF.

In the —— Division Court in the County of ——
No. , A.D. 18

BETWEEN A—— B——, Plaintiff,

AND

[Seal.] C—— D——, Defendant.

Whereas on the day of , A.D. 18 , in said Court, holden in and for said Division, judgment was given for the Defendant, and for \$ costs (or judgment of dismissal was given, and \$ for Defendant's trouble, and \$ for costs), which remains unsatisfied—here follow the last form of execution, to end, transposing the words "Plaintiff" and "Defendant" where they occur.

(79.) ON JUDGMENT FOR BALANCE OF SET-OFF.

In the —— Division Court in the County of ——
No. , A.D. 18

BETWEEN A—— B——, Plaintiff,

AND

[Seal.] C—— D——, Defendant.

Whereas at the sittings of this Court, holden on the day of , A.D. 18 , at , it was adjudged that the above-named Defendant should recover against the above-named Plaintiff the sum of \$, the residue of his set-off exceeding the Plaintiff's claim, together with \$ his costs of suit, which remains unsatisfied, you are hereby required (conclude as directed in last form).

(80.) EXECUTION UNDER 27 AND 28 VIC. C. 27, WHERE JUDGMENT OBTAINED AGAINST A DEFENDANT RESIDING IN A FOREIGN COUNTRY.

In the —— Division Court in the County of A.—
No. , A.D. 18

[Seal.] (Style of Cause.)

Whereas the place of sittings of this Court is nearest to the Defendant's residence, and at the sittings of the said Court holden on the day of A.D. 18 , in and for the said Division, by judgment of the said Court the Plaintiff recovered against the Defendant under the provisions of the Act 27 and 28 Vic. Cap. 27

Sec. 135,
pp. 64, 65,
and notes;
Sec. 24, page
293, Rules
143, 158.

Rule 152;
Sec. 24, page
293;
Rule 138.

Rules 5, 148,
Sec. 24, page
293;
Rule 158.

\$ for debt, with \$ for costs which said debt and costs remain unsatisfied, you are hereby required to levy of the goods and chattels of the Defendant (not exempt from execution in the said County of A or in the County of B (where the Defendant resides) the said moneys, &c. (conclude as in form 77.)

(81.) ON TRANSCRIPT OF JUDGMENT FROM ONE COURT TO ANOTHER.

In the — Division Court in the — County of —
No. , A.D. 18

BETWEEN A — B —, Plaintiff,

AND

[Seal.] C — D —, Defendant.

Whereas on the day of , A.D. 18 , the Plaintiff duly recovered in the Division Court in the County of , holden in and for the said Division, judgment against the Defendant for \$ for debt, and \$ for costs of suit (If the judgment was revived, use the following words, "and on the day of , A.D. 18 , the said judgment was duly revived") as appears by a transcript of the entry of such judgment attested by the seal of the Court, certified and signed by the Clerk thereof, and sent and addressed to the Clerk of this Division Court, pursuant to the provisions of "The Division Courts Act;" and whereas it appears, by certificate at the foot of the said transcript, attached, certified, signed, sent, and addressed as aforesaid, that the amount unpaid on the said judgment is \$, which said transcript and certificate is duly entered in the book of this Court, therefore you are hereby required, etc. (conclude as in form 77).

(82.) FOR AN EXECUTOR ON JUDGMENT REVIVED IN HIS FAVOUR.

In the — Division Court in the County of —
No. , A.D. 18

BETWEEN A — B —, Executor of C. D.,

deceased, Plaintiff,

AND

[Seal.] E — F —, Defendant.

You are hereby required to levy of the goods and chattels of the Defendant (not exempt from execution)

Rules 157,
158.

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in the said County of the sum of \$, which C. D. in his lifetime in this Court (or in the Division Court, etc.,) on , recovered against the Defendant for his debt (or damages) and costs, and whereof it was on etc. in this Court (or the Division Court, etc.,) adjudged that the Plaintiff, as Executor of the said C. D., should have execution, together with your lawful fees; so that you may have the same within thirty days after the date hereof, and pay the same over to the Clerk of this Court for the Plaintiff.

Given under the seal of the Court this day of
A.D. 18

X —— Y ——

Clerk.

To V. W. Bailiff of the said Court.

Due on Judgment..... \$

Interest.....

Subsequent costs.....

This execution.....

Levy the sum of \$, besides your
lawful fees on this precept.

(83.) ON JUDGMENT REVIVED AGAINST EXECUTOR OR
ADMINISTRATOR.

In the —— Division Court, in the —— County of ——
No. , A.D. 18

BETWEEN A —— B ——, Plaintiff.

[Seal.] AND

C —— D ——, Executor of E. F.,
deceased, Defendant.

You are hereby commanded (or as before or as often before) to make and levy by distress and sale of the goods and chattels of E. F., deceased, in the hands of the said Defendant, as Executor (or Administrator) to be administered, the sum of , which the Plaintiff in this Court (or in the Division Court, &c.,) on recovered against the said deceased in his lifetime for the Plaintiff's debt (or damages) and costs, and whereof it was on adjudged in this Court (or in the Division Court, etc.,) that the said Plaintiff should have execution against the said Defendant as Executor (or Administrator) of the said deceased, to be levied of the goods and chattels of the said deceased, in the

Rules 157
and 158.

said Defendant's hands to be administered, together with the costs of execution herein, and your lawful fees; so that you have the same within thirty days after the date hereof, and pay the same over to the Clerk of this Court for the Plaintiff.

Given under the seal of the Court this day of
18 .

X — Y — ,
Clerk.

To V. W., Bailiff of the said Court.

Judgment \$
Interest
Subsequent costs
This execution

Levy the sum of \$, besides your
own lawful fees upon this precept.

See Rules
64 to 75.

*N. B. Executions upon the judgments in other cases
against Executors, may be drawn from this Form, with
the requisite alterations.*

(84.) AGAINST GOODS OF TESTATOR.

In the —— Division Court in the —— County of ——
No. ——, A.D. 18 .

BETWEEN A —— B ——, Plaintiff.

[Seal.] AND

C —— D ——, Executor or Administrator
E. F., deceased, Defendant.

Sec. 24, page 293 ; Rule 158. Whereas on the day of , A.D. 18 , the Plaintiff duly received, in the said Court, helden in and for said Division, judgment against the said Defendant as Executor (or Administrator) of E. F. deceased, the sum of \$, for a certain debt, with \$, for costs, to be levied of the goods and chattels of the deceased; failing such goods, the costs to be levied of the Defendant's proper goods and chattels, which said debt and costs were ordered to be paid at a day now past, and remain unsatisfied: These are therefore to command you, forthwith to make and levy, by distress and sale of the goods and chattels, which were the property of the said E. F. in his lifetime, in the hands of the Defendant to be administered in the said County of , the said debt and costs, amounting together

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to the sum of \$, together with the costs of this execution ; if the Defendant have so much thereof in his hands to be administered ; and if he hath not so much thereof in his hands to be administered, then that you levy of the proper goods and chattels, of the Defendant, in the said County of not exempt from execution, the said moneys and your lawful fees, so that you may have the same within thirty days after the date hereof, and pay the same over to the clerk of this Court for the Plaintiff.

X — Y — .

Clerk.

To V. W., Bailiff of the said Court.

Judgment \$
Interest
Subsequent costs
This execution

Levy the sum of \$, besides your
lawful fees upon this precept.

(85.) IN REPLEVIN AGAINST PLAINTIFF WHEN RETURN OF
GOODS ADJUDGED WITH DAMAGES AND COSTS.

In the — Division Court in the Count of —

BETWEEN A — B — , Plaintiff,

[Seal.]

AND

C — D — , Defendant.

No. , A.D. 18 .

Upon hearing this action of Replevin at a Court Sec. 24, page
helden at in and for the said Division, on the 293; Rules
day of A.D. 18 , it was adjudged that the Plaintiff
do return to the Defendant the cattle (or the goods or
chattels, as the case may be stating particulars thereof),
in days , (as the case may be), *and also that the
Plaintiff should pay to the Defendant the sum of \$
for damages ;* (omit the words between the asterisks when
there are no damages awarded, but the judgment is merely
for a return and for costs); and also the sum of \$
for costs of suit ; and the Plaintiff has not returned to
the said Defendant the cattle, (or the said goods and
chattels), (or paid the said damages and costs), these
are, therefore, to require and order that without delay
you cause the cattle (or goods and chattels), aforesaid

to be returned to the Defendant, and that you levy of the goods and chattels of the Plaintiff, in the said County of (not exempt from execution), the said moneys, amounting together to the sum of \$, and your lawful fees, so that you may have the same within thirty days after the date hereof, and pay the same over to the Clerk of this Court for the Plaintiff.

Given under the Seal of the Court this day of A.D. 18 .

To V. W., Bailiff of the said Court.

Judgment.....	\$	X — Y — ,
Interest.....		Clerk.
Subsequent costs.....		
This execution		

Levy the sum of..... \$, besides your lawful fees on this precept.

(86.) AGAINST GARNISHEE ON JUDGMENT ALREADY RECOVERED.

In the Division Court in the County of Between A—B—, Plaintiff, } Judgment recovered on and C—D—, Defendant, } the day of A.D. [Seal.] and E—F—, Garnishee. } 18 , in the Division Court in the County of Amount unsatisfied, \$.

Adjudged against the Garnishee on the day of A.D. 18 \$.

To V. W., Bailiff of the said Court.

You are hereby required to levy of the goods and chattels of the Garnishee (not exempt from execution), \$ money owing from him to the Defendant, and which has been attached to satisfy the judgment in this case; and what you shall have done herein return with this writ within thirty days after the date hereof.

Dated the day of , A.D. 18 .

X — Y — ,
Clerk.

Rule 62;
Sec. 24, page
293;
Rule 158.

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(87.) AGAINST GARNISHEE ON JUDGMENT RECOVERED
AGAINST HIM AND PRIMARY DEBTOR.

In the — Division Court in the County of —
Between A — B —, Primary Creditor,
and
C — D —, Primary Debtor,
and
E — F —, Garnishee.

Amount adjudged due from the Primary Debtor to the
Primary Creditor the day of A.D. 18

for debt, \$
for costs, \$

[Seal.]

Total sum, \$

Rule 62;
Sec. 24, page
293;
Rule 158.

Amount adjudged to the Primary Creditor for money
owing from the Garnishee the day of
A.D. 18, \$

To V. W., Bailiff of the said Court.

You are hereby required to levy of the goods and
chattels of the Garnishee (not exempt from execution),
\$ money owing from him to the Primary Debtor,
and which has been adjudged to the Primary Creditor
to satisfy his said claim against the Primary Debtor,
and what you shall have done herein return with this
writ within thirty days after the date hereof:

Dated the day of 18

X — Y —, Clerk.

(88.) AGAINST PRIMARY DEBTOR AND GARNISHEE.

In the — Division Court in the County of —

Between A — B —, Primary Creditor,
and

C — D —, Primary Debtor,
and

[Seal.] E — F —, Garnishee.

No., A.D. 18

Rule 62;
Sec. 24, page
293; Rule
158.

Amount adjudged due from the Primary Debtor to the Primary Creditor, the day of , A.D. 18 , for debts... \$
For costs \$
Total debt and costs \$
Amount adjudged to the Primary Creditor for money owing from the Garnishee, the day of , A.D. 18 \$

To V. W., Bailiff of the said Court.

You are hereby required to levy of the goods and chattels of the Primary Debtor, in the said County of K—— (not exempt from execution), \$ above adjudged to be due to the Primary Creditor from the Primary Debtor, together with the costs of this precept, and your lawful fees, in executing the same. And if so much goods and chattels of the Primary Debtor be not found in the said County as will satisfy the said judgment, then that you levy of the goods and chattels of the Garnishee in the said County (not exempt from execution) \$ (or so much thereof as may be necessary to satisfy the said judgment) money owing from the Garnishee to the Primary Debtor, and which has been adjudged to the Primary Creditor; and what you shall have done herein return with this writ within thirty days after the date hereof.

Dated the day of , A.D. 18 .

X—— Y——,
Clerk.

(89.) FOR GARNISHEE'S COSTS.

In the —— Division Court in the County of ——
No. , A.D. 18 .

BETWEEN A—— B——, Primary Creditor,
AND

[Seal.] C—— D——, Primary Debtor,
AND

E—— F——, Garnishee.

To V. W., Bailiff of the said Court.

Whereas at the sittings of this Court holden on the day of , 18 , at it was adjudged that the Garnishee was not indebted to the Primary Debtor, as claimed by the Primary Creditor, for \$ for his costs to be paid at a day now past, and the Primary Creditor has not paid the same,

Rule 62; Sec.
24, p. 293;
Rule 158.

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You are hereby required to levy of the goods and chattels of the above-named Primary Creditor in the said County of (not exempt from execution,) \$ for his said costs, together with the costs of this precept and your lawful fees in executing the same, and what you shall have done herein return with this writ within thirty days after the date hereof.

Dated this day of 18

X — Y —
Clerk.

(90.) EXECUTION UNDER 293RD AND 296TH SECTIONS OF THE COMMON-LAW PROCEDURE ACT.

In the — Division Court in the County of —

In the matter of the suit in the Court of (Queen's Bench, or Common Pleas, or County Court of the County of)

[Seal.] BETWEEN A — B —, Plaintiff,

AND

C — D —, Defendant,

AND

E — F —, Garnishee.

To V. W., Bailiff of the said Division Court.

You are hereby required to levy of the goods and chattels of the above-named Garnishee, in the said County of (not exempt from execution) \$ money, owing from him to the Defendant, which has been attached to satisfy the judgment of the said Court in the said cause, and which, by the order of the Judge of the County Court of the said County of , dated the day of A.D. 18 , the said Garnishee was ordered to pay to the Plaintiff. And what you shall have done herein, return with this writ within thirty days after the date hereof.

Sec. 296, pp. 216, 217;
Rule 63, sec. 24, page 293;
Rule 158.

Dated the day , A.D. 18

X — Y —
Clerk.

(91.) EXECUTION AGAINST THE GOODS OF CLAIMANT ON INTERPLEADER.

In the — Division Court in the County of —

No. A.D. 18

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BETWEEN A — B —, Plaintiff,
 [Seal.] AND
 C — D —, Defendant,
 E. F., Claimant.

Sec. 135, pp. 64 and 65; Sec. 24, page 293; Form 71; Rule 158.

Whereas on the day of , A.D. 18 , the Plaintiff duly received in said Court, holden in and for said Division, judgment against the Defendant for \$ debt, and \$ for costs of suit which remained unsatisfied, (when the judgment has been revived add the following words: "and on the day of , A.D. 18 , the said judgment was duly revived") and the said moneys not being paid, an execution issued against the goods and chattels of the Defendant, under which certain goods and chattels were seized, [If the Interpleader was in respect to goods attached, omit all the preceding after the word "Claimant," and say in lieu thereof as follows:—"Whereas a writ of attachment was sued out of this Court (or issued by a Justice of the Peace) under which certain goods and chattels, etc., were seized and attached"] to which the above named Claimant made claim, and which claim came on to be heard and decided, upon Interpleader summons, at a sitting of this Court, held on at and at such last mentioned Court it was adjudged, touching the said claim, that the goods [or the goods, chattels and moneys, or proceeds of the goods, etc., (as the case may be)] mentioned in the Interpleader summons [If only for a part of the goods, etc., add the words—"hereafter mentioned, that is to say" (here enumerate them)] were not the property of E. F., (the Claimant); and it was ordered that the sum of \$ the costs of that proceeding, should be paid by the said Claimant to the Clerk in days, for the use of the said Plaintiff; and whereas the said sum of \$ has not been paid, pursuant to the said order, you are hereby required to levy of the goods and chattels of the Defendant, in the said County of (not exempt from execution) the said sum of \$ and your lawful fees, so that you may have the same within thirty days after the date hereof, and pay the same over to the Clerk of this Court for the Plaintiff.

Given under the seal of this Court this day of ,
 A.D. 18 .

X — Y —,
 Clerk.

To V. W., Bailiff of said Court.

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Clerk.

Judgment \$
Interest
Subsequent cost
This execution

Levy \$, besides your
own lawful fees upon this precept.

(92.) EXECUTION UNDER THE ACT RESPECTING LINE
FENCES AND WATERCOURSES.

In the — Division Court in the County of — .
No. , A.D. 18 .

BETWEEN A — B — , Plaintiff.
[Seal.] AND
C — D — , Defendant.

Whereas under the provisions of an Act of the Legislature of the late Province of Canada, 22 Vic. Chnp. 57, entitled "An Act respecting Line Fences and Watercourses," A. B., of the township of , C. D., of the same place and E. F. of the same place three fence-viewers duly appointed for the said township of in the County of , having been summoned by G. H., a Justice of the Peace in and for the County of and residing within the said township, to ascertain the amount payable by the above-named Defendant, to the above-named Plaintiff, "for making his share of a certain fence," "watercourse" or "ditch," (as the case may be) in the said township of did on this day of A.D. 18 , make their determination between the said Plaintiff and Defendant, of and concerning the same, and of and concerning the amount, the said Defendant should pay the Plaintiff as follows (here state the award of the fence-viewers,) and duly reported the same in writing under their hands, to the said G. H., on the day and year aforesaid and the said G. H. did, on the day of in the year aforesaid, transmit the said determination to the Clerk of this Court, being the Division Court having jurisdiction over that part of the said township of in which the said fence is situated, and did certify therewith that the costs of him the said G. H., with the Fence-viewers, bailiff's and witnesses' fees, amounted to the sum of \$ which the Defendant by the said determination was ordered to pay.

Con. Stat. of
U.C. cap. 57,
sec. 16, (sub-
secs. 10, 11),
and sec. 17,
pp. 218, 219;
sec. 24, page
293; Rule
158.

And whereas the Defendant did not pay to the Plaintiff, within forty days from the date of the said determination the said sum of \$ and costs, and the same remain wholly unsatisfied, now therefore at the request of the Plaintiff, and in pursuance of the said Act, you are hereby required to levy of the goods and chattels of the Defendant, in the said county (not exempt from execution), the said moneys amounting together to the sum of \$ and your lawful fees; so that you may have the same moneys thirty days after the date hereof and to pay over the same to the clerk of this court, to the Plaintiff.

Given under the Seal of the Court this day of A.D. 18

X — Y —, Clerk.

To V. W., Bailiff of the said Court,

Judgment \$

Interest

Subsequent costs.....

This Execution.....

Levy this sum of \$, besides your lawful fees upon this precept.

(93.) WARRANT OF COMMITMENT IN DEFAULT OF APPEARANCE.

In the — Division Court in the County of —
No. ., A.D. 18 .

[Seal.]  BETWEEN A — B —, Plaintiff.
AND
C — D —, Defendant.

To V. W., Bailiff of the said Court, and to all Constables and Peace Officers of the County of — and to the Jailer of the Common Jail of the said County of —

Sec 165 et
seq. pp. 80,
81, note (s);
Rules 101
to 103.

Whereas, at the sittings of this Court, (or of the Division Court for, etc.), holden at on the day day of 18 , the Plaintiff, by the judgment of the said Court, in a certain suit wherein the Court had jurisdiction, recovered against the Defendant the sum of \$, for his debt (or damages) and costs of suit, which were ordered to be paid at a day now past:— And whereas the Defendant, not having made such payment upon application of the Plaintiff, a summons

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was duly issued from and out of this Court, against the Defendant, by which summons the Defendant was required to appear at the sittings of this Court, holden at on, etc., to answer such questions as might be put to him, touching (*set out as in the summons*):* And whereas it was duly proved, on oath, at the said last mentioned sittings of this Court, that the Defendant was personally served with the said summons:—And whereas the Defendant did not attend, as required by such summons, nor allege any sufficient cause for not so attending :—And whereas it appeared to the satisfaction of the Judge that such non-attendance was wilful, (or, "whereas the Defendant has failed to attend after being twice so summoned.")

And thereupon it was ordered by the Judge of this Court that the Defendant should be committed for the term of days, to the Common Jail of the said County, according to the form of the statute in that behalf, or until he should be discharged by due course of law:—These are therefore to require you, the said Bailiff, and others, to take the Defendant, and to deliver him to the Jailer of the Common Jail of the said County: And you the said Jailer are hereby required to receive the Defendant, and him safely to keep in the said Common Jail for the term of days from the arrest under this warrant, or until he shall be sooner discharged by due course of law, according to the provisions of the Act of Parliament in that behalf: For which this shall be your sufficient warrant.

Given under the seal of the Court this day of
A.D. 18

X — Y —
Clerk.

Debt and costs up to the time of
delivering of this warrant for
execution.....\$

(94.) WARRANT OF COMMITMENT AFTER EXAMINATION.

In the — Division Court in the County of —

(As in last Form, down to the asterisk,* conclude as follows.)

And whereas the Defendant having duly appeared at the said Court, pursuant to the said summons, was examined touching the said matters: And whereas it appeared, on such examination, that [here insert the particular ground of commitment in the language used in

Sec. 165 et seq., page 80
et seq., and
note(s),
Rules 101 to
103,

the statute, e. g. "C. D., the Defendant, incurred the debt (or liability), the subject of this action under false pretences" (or "by means of fraud or breach of trust")]: And thereupon it was ordered by the said Judge that the Defendant should be committed for the term of days to the Common Jail of the said County, according to the form of the statute in that behalf, or until he should be discharged by due course of law: These are therefore to require you, the said Bailiff, and others, to take the said Defendant, and to deliver him to the Jailer of the Common Jail of said County; and you the said Jailer are hereby required to receive the Defendant, and him safely keep in the said Common Jail, for the term of days from the arrest under this warrant, or until he shall be sooner discharged by due course of law, according to the provisions of the Act of Parliament in that behalf; for which this shall be your sufficient warrant.

Given under the seal of the Court this day of
18 .

X — Y — ,
Clerk.

Debt and costs up to the time of
the delivery of this warrant of
execution \$

(95.) WARRANT TO LEVY FINE UPON WITNESS.

In the — Division Court in the County of —

BETWEEN A — B — , Plaintiff,

AND

[Seal.] C — D — , Defendant.

Whereas at the sitting of this Court, holden on at , it was adjudged that H. H. was duly summoned to appear as a witness in this action, at a sitting of this Court [and also to produce (as the case may be)]; that payment (or a tender of payment) of his reasonable expenses was made to him, and that he did not appear [or having appeared did wilfully refuse to be sworn and give evidence in this action (or to produce such, etc.)]: (where a witness in Court refuses to give evidence instead of foregoing, commence: "Whereas H. H. being before the Court at a sittings thereof, and called upon to give evidence, in the above cause, did wilfully refuse to be sworn and give evidence"); And thereupon it was adjudged, that the said H. H. should pay a fine of \$,

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for such neglect, (or refusal) in days: (or forthwith): And whereas the said H. H. hath not made such payment: These are therefore (as before or as often before) to command you forthwith to make and levy by distress and sale of the goods and chattels of the said H. H. (not exempt from execution) the said fine and costs, amounting together to the sum of \$ and your lawful fees; so that you may have the same, within thirty days after the date hereof, and pay over the same to the Clerk of the Court.

Given under the seal of the Court this day of
18

By order of the Judge,

X — Y — ,
Clerk.

To V. W., Bailiff of the said Court.

Fine..... \$
Costs.....
Execution

Levy the sum of \$, and your own
lawful fees.

(96.) WARRANT OF COMMITMENT FOR CONTEMPT IN OPEN
COURT.

In the — Division Court in the County of —

To V. W., Bailiff of the said Court, and to all Constables and Peace Officers of the County of —, and to the Jailer of the Common Jail of the said County of

Whereas at the sittings of this Court holden on at it was adjudged, that E. F. did, then and there in open Court, wilfully insult me Judge (or Deputy or acting Judge) of the said Court [or did, in view of the Court, wilfully insult Clerk, (or Bailiff) of the said Court, during his attendance at such Court (or did unlawfully interrupt the proceedings of the said Court)]; And it was ordered, that the said E. F. should forthwith pay a fine of \$ for such offence, and in default of payment, be committed to the Common Jail of the County of for days; And whereas the said E. F. did not pay the said fine, in obedience to the said order: These are therefore to require you, the said Bailiff and others, to take the said E. F., if he shall be found within the said County of , and

Sec. 182, p.
91; sec. 184,
p. 92; Sec.
189, p. 94;
Rules 101 to
103.

deliver him to the said Jailer of the Common Jail of the said County of ; And you the said Jailer are hereby required to receive the said E: F: and him safely keep in the Common Jail aforesaid, for the term of days from the arrest under this warrant, unless the said fine and costs, the costs amounting to \$, and also the expenses attending the commitment: amounting together to the sum of \$, be sooner paid.

Given under my hand and seal this day of 18 . [L. S.]

Sealed with the seal of the Court, [L. S.]

X — Y —
Clerk.

97.) CERTIFICATE FOR DISCHARGE OF A PARTY FROM CUSTODY.

In the — Division Court in the County of — No. , A.D. 18 .

BETWEEN A — B —, Plaintiff.
AND
C — D —, Defendant.

Sec. 169, p.
82.

I, X — Y —, certify that the Defendant, now in your custody under Warrant of Commitment in this cause, has, since the issuing of the said Warrant, satisfied the moneys for the non-payment whereof he was so committed, together with all costs and charges in respect thereof; and the said Defendant may, in respect of such Warrant, be forthwith discharged from and out of your custody.

Given under the seal of the Court this day of 18 .

[Seal.] X — Y —
Clerk.

To the Jailer of the Common Jail of the County of
County of
(here insert the county.) }

TRANSCRIPTS.

(98.) TRANSCRIPT TO ANOTHER DIVISION COURT OF JUDGMENT UNDER THE ACT OF 1869.

In the — Division Court in the County of —

BETWEEN A — B —, Plaintiff,

[Seal.]

AND

C — D —, Defendant.

On the day of 18 , a "Special Summons" requiring the Defendant to answer the Plaintiff's claim for a debt or money demand, amounting to \$, was issued out of this Court in this cause, with the particulars of the Plaintiff's claim thereto attached; on the day of 18 , the Defendant was duly served with a copy of the said summons, and particulars of claim, and the Defendant did not leave with the Clerk a notice, as required by the statute in that behalf, that he disputed the Plaintiff's claim, or any part thereof, (or as the case may be), the said summons, and particulars, with an affidavit of the due service of each, having been filed, final judgment was entered on the day of A.D. 18 , by the Clerk, as follows: (here copy minute of judgment, and if judgment revived state the fact as in Form 100.) An execution issued against the goods of the Defendant on the day of 18 , and was returned on the day of 18 , nulla bona, (or as the case may be).

Sec. 139, pp.
66 and 67;
Sec. 25, page
293, note (s),
Rules 57,
161, 162, 163;
Form 52 (a),
page 179.

Pursuant to the provisions of the Division Courts Acts, I, X — Y —, Clerk of the said Court, do certify that the above transcript is correct, and duly taken from the Procedure Book of the said Court, and that judgment in the above cause was recovered at the date above stated, viz., the day of 18 ; and further, that the amount unpaid on said judgment is \$, as stated below.

Given under the Seal of the said Court the day of A.D. 18 .

Amount of judgment...\$
Debt.....
Costs.....

Total.....\$

Additional costs
Do. interest..... X — Y — ,

Total.....\$

Clerk.

Paid.....

Amount due.....\$

To R. S., Clerk of Division Court, County of

(99.) TRANSCRIPT TO COUNTY COURT OF JUDGMENT
UNDER THE ACT OF 1869.In the — Division Court in the County of —
BETWEEN A — B —, Plaintiff,
[Seal.] AND
C — D —, Defendant.

The following proceedings were had:—

On the day of 18, a "Special Summons" requiring the Defendant to answer the Plaintiff's claim for a debt or money demand, amounting to \$, was issued out of this Court in this cause, according to the statute in that behalf, with the particulars of the Plaintiff's claim thereto attached; on the day of 18, the Defendant was personally served with a copy of the said summons, and particulars of claim, and the defendant did not leave with the Clerk a notice, as required by the statute in that behalf, that he disputed the Plaintiff's claim or any part thereof, (or as the case may be), the said summons, and particulars, with an affidavit of the due service of each, having been filed, final judgment was entered on the day of 18, by the Clerk, as follows: (here copy minute of judgment, and if judgment, revised state the fact as in Form 100). On the day of 18, a writ of execution on the said judgment was duly issued (conclude as in last Form, omitting the address to the Clerk.)

See Form 52, (N. B.—The above Form may be adopted, with the necessary alteration, for a Transcript to the County Court of a Judgment upon ordinary Summons.)

(100.) TRANSCRIPT OF JUDGMENT ON ORDINARY SUMMONS
FROM ONE DIVISION COURT TO ANOTHER.

In the — Division Court in the County of —

Transcript of the entry of a judgment recovered on the day of , A.D. 18, in said Court, holden in and for said Division in a suit numbered , A.D. 18.

[Seal.] **BETWEEN A — B —, Plaintiff.**

AND

C — D —, Defendant.

Amount of judgment.

Debt, \$ _____
Costs, \$ _____
\$ _____

Additional
costs, \$ _____
Total, \$ _____

Amount
paid, \$
18
18

Total paid, \$ _____
Amt. due, \$ _____

Judgment for Plaintiff for \$ debt, and \$ costs of suit; execution issued on the day of , A.D. 18 , and returned on the day of A.D. 18 (here state the return). (If the judgment was revived, add the following words, " and on the day of , A.D. 18 , the said judgment was duly revived.") Pursuant to the provisions of "The Division Courts Acts.

I, X — Y —, Clerk of the said Division Court, do certify that the above transcript is correct, and duly taken from the procedure book of the said Court, and that judgment in the above cause was recovered at the date above stated, viz., the day of , A.D. 18 , and further, that the amount unpaid on said judgment is \$, as stated in the margin hereof.

Given under the seal of the said Court this day of , A.D. 18 .

X — Y —,
Clerk.

To ,
Clerk of the
Division Court in the County of .

NOTICES.**(I01.) OF TRIAL BY JURY AND NEW TRIAL.**

In the — Division Court in the County of —.

BETWEEN A — B —, Plaintiff.

AND

C — D —, Defendant.

Take notice that this cause will be tried by a jury, Secs. 119, 120, p. 59;
the Plaintiff (or Defendant) having demanded a jury Rules 88 and 142 (e);
therein, or take notice that the Judge has ordered a new trial upon payment of costs (or with costs to abide

the event, or as the case may be) and has ordered the next trial to be had before a Jury (or as the case may be.)

Dated this day of , A.D. 18

Yours, &c.,

X — Y —

Clerk.

To

The above named Plaintiff (or "Defendant.")

(102.) FOR CLERK'S NOTICES TO THE PLAINTIFF.

In the — Division Court in the County of —.

No. , A.D. 18 .

BETWEEN

Plaintiff.

AND

Defendant.

Secs. 87, 90,
91, 93, pp.
45, 46, 47,
and Rules
20, 21, 88;
Sec. 2, pp.
276, 277,
note (d).

1st. Take notice that the Defendant* has given a confession for the full amount of your claim.

Or 2nd. *Disputes your claim, or does not dispute your claim.

Or 3rd. *Disputes the following items of your claim, viz., (here specify the items set forth in the Defendant's notice to the Clerk), and admits the residue, and you are required forthwith to say in writing if you are willing to take judgment for the part admitted.

Or 4th. *Will on the trial claim a set-off against your demand, and the particulars thereof are hereunto annexed.

Or 5th. *Will on the trial insist that your claim is barred by the Statute of Limitations (or other statutory defence not herein specified).

Or 6th. *Will on the trial insist that he is discharged from payment of your claim by the provisions of the Insolvent Act.

Rule 132. Or 7th. *Will admit on the trial the 1st, 9th, 11th (or other) items of your particulars of account to be correct.

Rule 132. Or 8th. *Will admit on the trial the signing [or endorsement], of the promissory note [or bill of exchange] sued upon, (or as the case may be), and denies the residue of your claim.

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Or 9th. *Has paid into Court the sum of \$, together with \$ for costs of suit incurred up to the day of such payment, in full satisfaction of your claim, which will be paid to you upon demand at my office; and all proceedings in the action will be stayed, unless within three days after you receive this notice you signify to me your intention to proceed for the remainder of your demand; and in case you either accept or refuse the same in full, you must give a written notice to that effect to me within the said three days, otherwise you will be liable to pay to the Defendant such subsequent costs as he may incur in this action.

Secs. 87 and
90, pages 45
and 46;
Rules 129 &
130.

Or 10th. *Has pleaded that he duly tendered to and offered to pay you before this action was brought the sum of \$ in full satisfaction of your claim, and has filed a plea of such tender in my office, and paid that sum into Court, pursuant to the 87th section of the Division Courts Act, and that sum will be paid to you, less one dollar, in case you do not wish to further prosecute your suit, and all proceedings in the action will be stayed, unless you signify to me within three days from the time you receive this notice, your intention to proceed for your demand, notwithstanding such plea.

Sec. 87, page
45, note (o);
Rules 129 &
130.

Or 11th. *Will on the trial insist that you are not a duly certificated Attorney or Solicitor.

Secs. 27 & 49
C. S. of U. C.
cap. 35.

Or 12th. *Will insist upon the defence at the trial that the note (or bill) you have sued upon, and which forms (part of) the particulars of your claim, was not duly stamped (or that the stamp was not duly cancelled) according to law.

31 Vic. cap.
9, sec. 11.

Or 13th. *Will insist as a defence upon the trial that you have not given the proper notice of action before suit to which the Defendant is entitled as a Justice of the Peace, (or Peace Officer), under Con. Stat. of U. C., cap. 126, or as a Bailiff of the Division Court, under the 193rd section of the Division Courts Act.

Con. Stat. of
U. C., 991;
and Sec. 93,
ante pp. 47
& 48; and
Secs. 192 et
seq., pp. 95
et seq., and
notes.

Or 14th. *Defends this action under the protecting clauses of the Division Courts Act, viz., sections 192, 193, 195, 196, 197 and 198.

Dated the day of A.D. 18 .

X — Y — ,

To

Clerk.

The above-named Plaintiff.

(103.) DEFENDANT'S NOTICES TO THE PLAINTIFF OR CLERK.

In the —— Division Court in the County of ——
No. , A.D. 18

BETWEEN A—— B——, Plaintiff,

AND

C—— D——, Defendant.

Rules 88 &
132

Sec. 2, p. 276,
note (d).

Take notice, that I will admit, on the trial, the first, second and third items of the Plaintiff's particular to be correct [or the signing and endorsement of the promissory note sued upon, (or as the case may be.)] or

Take notice that I dispute the claim of the Plaintiff (or here specify all or any of the grounds of defence set forth in the Form for Clerks' notices.)

Dated this day of , A.D. 18

Yours, etc.,

C—— D——,
Defendant.

To the Plaintiff (or to the Clerk of the said Court).

(104.) CONFESSION OF DEBT AFTER SUIT COMMENCED.

In the —— Division Court in the County of ——

BETWEEN A—— B——, Plaintiff,

AND

C—— D——, Defendant.

Sec. 117, p.
58 and note
(y), p. 127.

I acknowledge that I am indebted to the Plaintiff in the sum of \$, and consent that judgment for that amount and costs may be entered against me in this cause, according to the practice of the Court.

Dated the , 18

Witness (or Bailiff.)

C. D.

(105.) BOND ON SUPERSEDEAS TO WARRANT OF ATTACHMENT.

In the —— Division Court in the County of ——

BETWEEN A—— B——, Plaintiff,

AND

C—— D——, Defendant.

(106.)

In the

BETW.

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Know all men by these presents, that we, C. D. of [insert place of residence and addition,] the above Sec. 109, p. 106. Defendant, E. F. of &c., and G. H. of &c., are, and each of us is, jointly and severally held and firmly bound to A. B., of &c., the above Plaintiff, in the sum of \$ to be paid to the said Plaintiff, his certain attorney, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, and each and every of us binds himself, his heirs, executors, and administrators firmly by these Presents.

Sealed with our respective seals, and dated the day of , 18 .

Whereas the above named Plaintiff hath sued out of the said Court (or from a Justice of the Peace) a warrant of attachment against the goods and chattels of the Defendant, for the sum of and under and by virtue of the said attachment, certain goods and chattels of the Defendant, to wit: (specify property seized) have been seized and attached: and the Defendant desires, that the said warrant be superseded, and the property, so attached, restored to him under the provisions of the 209 Section of the Division Courts Act.

Now the condition of this obligation is such, that if the said Defendant, his heirs, executors or administrators, do and shall, in the event of the claim, in the said cause being proved, and judgment being recovered thereon, as in other cases, where proceedings have been commenced against the person, pay the same, or pay the value of the said property, so taken and seized as aforesaid, to the Plaintiff, his executors or administrators, or produce such property, whenever thereto required, to satisfy such judgment: Then this obligation to be void—else to remain in full force and virtue.

Sealed and delivered }
in presence of }

C. D., [L.S.]
G. H., [L.S.]
E. F., [L.S.]

(Add affidavit of caption.)

See Form
109, pp. 427,
428.

AFFIDAVITS AND OATHS.

(103.) AFFIDAVIT OF SERVICE OF ORDINARY SUMMONS.

In the — Division Court in the County of —

BETWEEN A — B —, Plaintiff,

AND

C — D —, and E — F —, Defendants.

Secs. 75 to
80, pp. 40 &
41, note (c);
Sec. 104, p.
52; Sec. 18 &
19, p. 291;
Rules 82, 90
& 133; Form
110, note (l).

I, V. W., Bailiff of the Division Court in the County of (or "of the said Court") make oath and say, that I did on the day of , A.D. 18 , duly serve each of the above Defendants, or if but one served state "C. D. one of the Defendants,") with a true copy of the annexed summons and statement of claim, by delivering the same personally to each of the said Defendants, (or if but one served, "to C. D. one of the said Defendants,") (or if the service was not personal, state how and on whom served, see D. C. Act, sec. 77,) and that I necessarily travelled miles to make such service.

Sworn, etc.

V — W —,
Bailiff.

(Or, this form may be used when the affidavit is indorsed on the summons.)

Secs. 75 to
80, pp. 40 &
41, note (c);
Sec. 104, p.
52; Sec. 18 &
19, p. 291;
Rules 82, 90
& 133; Form
110, note (l).

I swear, that this summons and claim therewith were served by me on the day of , by delivering a true copy of both, personally, to the Defendant (or to the wife or servant of the Defendant, or to a grown up person being an inmate of, and at the Defendant's dwelling) and that I necessarily travelled miles to do so.

Sworn, etc.

V — W —,
Bailiff.

(107.) AFFIDAVIT OF SERVICE OF "SPECIAL SUMMONS."

In the — Division Court in the County of —.

BETWEEN A — B —, Plaintiff.

AND

C — D —, Defendant.

Secs. 75 to
80, p. 40 et
seq.; sec. 104,
p. 52; secs.
18 & 19, p.
291; Rules
18, 19, 90, 133;
Form 110;
and sec. 8,
p. 278.

I, V. W., Bailiff of the Division Court in the said County of (or of the said Court) make oath and say, that I did, on the day of , 18 , duly serve the above named Defendant with a true copy of the Summons, Notices and Warnings therein, and the particulars of claim therewith in this cause, by delivering the same personally to the said Defendant, (or if the service was not personal, state how and on whom served, see the Act, Sec. 77,) and that I necessarily travelled miles to make such service.

Sworn before me at

this day of , 18 .

Clerk.

V. W., Bailiff.

*Or this form may be used when the Affidavit is indorsed
on the Summons.)*

I swear, that this Summons and the Notices and Warnings therein, and the particulars of claim therewith, were duly served by me on the day of A.D. 18, by delivering a true copy of each to the Defendant personally, (or if the service was not personal, state how and on whom served, see the Act, Sec. 77), and that I necessarily travelled miles to effect such service.

secs. 75 to
80, p. 40 et
seq.; sec. 104,
p. 52; secs.
18 & 19, p.
291; Rules
18, 19, 90, 133;
Form 110;
and sec. 3,
p. 278.

Sworn before me at
this day of , 18. } V. W., Bailiff.
Clerk.

(108.) AFFIDAVIT OF EXECUTION OF CONFESSION.

In the Division Court in the County of

BETWEEN A B , Plaintiff,
AND
C D , Defendant.

I, Clerk (or Bailiff) of the Division Court in the County of (or of the said Court) make oath and say, that I saw the above (or annexed confession) duly executed by the Defendant, and that I am a subscribing witness thereto, and that I have not received, and am not to receive anything from the Plaintiff or Defendant, or any other person, except my lawful fees, for taking such confession, and that I have no interest in the demand, sought to be recovered in this action.

See sec. 104,
117 & 118,
pp. 52, 58,
59; note (v).
Rule 133.

X. Y. (or V. W.)

Sworn before me, &c.

(109.) AFFIDAVIT OF EXECUTION (CAPTION).

In the Division Court in the County of

BETWEEN A B , Plaintiff
AND
C D , Defendant.

I, O. P., of the, etc. make oath and say that on the day of , A.D. 18, I was present and saw G. H. and K. L. (as the case may be) duly sign and execute the annexed award (or Bond, or other instrument).

Sec. 104, p.
52; and Rule
133.

That the names G. H. and K. L. at the foot of the said award (or as the case may be) are of the proper handwriting of the said G. H. and K. L., and that the

name O. P. subscribed to the same as the witness thereto is my proper handwriting.

Sworn, etc.

O. P.

(110.) FORMS OF OATHS, &c.

Sec. 104, p.
52; Rules
133 & 134.

(a) To a Witness at the trial who swears upon the Bible: "The evidence you shall give to the Court (and Jury sworn) touching the matters in question between the parties, shall be the truth, the whole truth and nothing but the truth. *So help you God.*"

(b) To a Witness who swears with uplifted hand: Add to the foregoing after the last word "*truth*," "and this you do swear in the presence of the ever-living God, and as you shall answer to God at the great judgment day. *So help you God.*"

(c) To a Jew: He is to be directed to cover his head, the Pentateuch is to be opened and placed before him, then proceed as in the first form, only make use of the name "*Jehovah*" instead of "*God*."

(d) To a Quaker, Menonist or Tunker, or other person allowed by law to affirm:

Con. S. U. C.
cap. 33, p.
401.

The Witness is to be directed to repeat his name after the Clerk, and the following: "I, K. L., do solemnly, sincerely and truly declare and affirm that I am one of the Society called 'Quakers,' (or as the case may be,) after which, the affirman repeating his name, "I, K. L., do solemnly, sincerely and truly declare and affirm that the evidence I shall give to this Court touching the matter in question," etc.

By 33 Vict.
cap. 14 (Ont.)
which comes
into force on
1st March,
1870, all persons
who are
unwilling to
be sworn
from con-
scientious
motives
may, except
in criminal
cases, make
an affirma-
tion or
declaration
in lieu of
an oath.*

Sec. 131, p.
62, note (c).

(e) To an Interpreter (where witness cannot speak English, or is deaf and dumb):

"You shall truly interpret between the Court (the Jury), the parties in this cause, and the witness produced. *So help you God.*"

(f) To a Witness sworn on *Voir Dire*:

"You shall truly answer make to such questions as shall be put to you, touching your interest in the event of this cause. *So help you God.*"

(g) To Jury called by parties:

"You and each of you shall well and truly try the matters in difference between the parties, do justice

* The form given in the act is as follows:

"I, _____, do solemnly, sincerely and truly affirm and declare that the taking an oath is according to my religious belief unlawful; and I do also solemnly, sincerely and truly affirm and declare, &c."

between them according to the best of your skill and ability, and a true verdict give in accordance to the evidence. *So help you God.*"

(h) To Jury called by the Judge:

"You and each of you shall well and truly try the facts controverted in this cause between the parties, Sec. 132, pp. 62 and 63, and a true verdict give according to the evidence. *So help you God.*" note (d).

(i) To a Defendant who appears upon a judgment summons:

"You shall true answer make to all such questions Sec. 160, p. 79. as shall be put to you touching the subject upon which you have been now summoned to appear for examination, and what you shall state respecting the same shall be the truth, the whole truth and nothing but the truth. *So help you God.*"

(j) To the officer who conducts a retiring Juror out of Court:

"You shall retire with such Jurors as have leave of absence from this Court, you shall not speak to them yourself in relation to the subject of this trial, nor suffer any person to speak to them, and you shall return with them without unnecessary delay. *So help you God.*"

(k) To the officer when the Jury retire to consider their verdict:

"You shall keep every person sworn on this Jury in some private and convenient place without meat or drink; you shall not suffer any person to speak to them, or speak to them yourself, except to ask them whether they have agreed on their verdict. *So help you God.*"

(l) To a Deponent or Affirmant swearing to an affidavit or affirmation:

"You do swear (or affirm) that the contents of this affidavit (or affirmation) to which you have subscribed your name (or made your mark) are just and true. *So help you God.*" See ante (d). (Or "and so you solemnly, sincerely Sec. 104, p. 52; and p. 423 ante. declare and affirm.")

(m) OATH TO BE ADMINISTERED TO WITNESS BY ARBITRATOR OR UMPIRE.

The evidence which you shall give before me as arbitrator (or umpire) touching the matters in difference in Sec. 118 p. 62, this reference, shall be the truth, the whole truth, and nothing but the truth. *So help you God.*

(n) JURAT TO AFFIDAVIT BY ILLITERATE DEPONENT.

Rule 133.

Sworn by the above named deponent, A. B., at , in the County of , on , and I certify that the affidavit was first read in my presence to said A. B., who seemed perfectly to understand the same, and wrote his signature (or made his mark) thereto in my presence.

X. Y., Clerk, etc.
Or as the case may be.

(o) AFFIRMATION BY QUAKER, ETC., AND JURAT THERETO.

(Court and style of cause.)

Con. S. U. C. cap. 82, secs. 1 & 2. I, A. B., of , etc., do solemnly, sincerely and truly declare and affirm that I am one of the Society called Quakers (or Menonists, Tunkers, Unitas Fratrum or Moravians, as the case may be), and I do also solemnly, sincerely and truly declare and affirm as follows, that is to say (state the facts).

See p. 423
ante.

Solemnly affirmed at , in the county of , on , before me: } A. B.

X. Y., Clerk, etc.
Or as the case may be.

(III.) AFFIDAVIT OF JUSTIFICATION.

In the —— Division Court in the County of ——

BETWEEN Plaintiff,
AND
Defendant.

Sec. 104, p. 52; Rules 133 & 134. We, (C. D. and E. F., of, etc.), the sureties in the annexed bond named, do severally make oath and say, as follows:

First. I, deponent C. D. for myself, make oath and say, that I am a holder, residing at , and that I am worth property to the amount of over and above what will pay my just debts.

Secondly. I, deponent E. F. for myself, make oath and say, that I am a holder, residing at , and that I am worth property to the amount of over and above what will pay my just debts.

C —— D ——
E —— F ——

The above named C. D. and E. F. were severally sworn before me at _____ in the county of _____, the _____ day of _____, A.D. 18_____. Rules 133 & 134.

X _____ Y _____
Clerk.

(112.) AFFIDAVIT OF DISBURSEMENTS TO SEVERAL WITNESSES.

In the _____ Division Court in the County of _____

BETWEEN A _____ B _____, Plaintiff,

AND

C _____ D _____, Defendant.

I, A. B., of _____, the above Plaintiff, (or C. D., the above Defendant, or E. F., agent for the above Plaintiff or Defendant), make oath and say:

Rule 147,
Form 3; sec.
104, p. 52;
Rules 133
& 134.

1st. That the several persons whose names are mentioned in the first column of the schedule at the foot hereof were necessary and material witnesses on my behalf (or on behalf of the said Plaintiff or Defendant) and attended at the sittings of this Court on the day of _____, as witnesses on my behalf, (or on behalf of the said Defendant or Plaintiff), and that they did not attend as witnesses in any other cause; (if otherwise, state the fact).

2nd. That the said witnesses necessarily travelled in going to the said Court, the number of miles respectively mentioned in figures in the second column of the said schedule opposite to the name of each of the said witnesses respectively.

3rd. That the several and respective sums of money mentioned in figures in the third column of the said schedule opposite to the names of the said witnesses respectively, have been paid by me (or by the Plaintiff or Defendant) to the said witnesses respectively as in the said schedule set forth for their attendance and travel as witnesses in this cause.

A _____ B _____.

Sworn before me at this day of 18.

X _____ Y _____
Clerk.

SCHEDULE REFERRED TO IN THE FOREGOING AFFIDAVIT.

Names of Witnesses.	Miles.	Sums paid.

(113.) AFFIDAVIT FOR REVIVAL OF JUDGMENT.

In the —— Division Court in the County of ——.

BETWEEN A —— B ——, Plaintiff,

AND

C —— D ——, Defendant.

Rules 155 et seq.; sec. 104
p. 52; Rules 183 & 184.

I, A. B., of the of in the County of yeoman (if the affidavit be made by the Plaintiff's attorney or agent with the necessary alteration), make oath and say as follows:—

1st. On the day of , A.D. 18 , I recovered a judgment of this Court against the above-named Defendant for \$ debt, and \$ costs of suit.

2nd. No part of said moneys so recovered has been paid or satisfied, and the said judgment remains in full force (or "the sum of , part only of the said moneys, has been paid, and the judgment remains in full force as to the residue of the said moneys so recovered thereby.")

3rd. I (or "the said Plaintiff") am entitled to have execution of the said judgment, and to issue execution thereupon (for the sum of \$) as I verily believe.

Sworn, etc.

Clerk

Baili

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6th C

UPON

Clerk

Bailif

Fee F

Allow

Oct.

(114) BILL OF COSTS.

UPON A CLAIM FOR SAY \$20,

Upon Special Summons to Judgment entered.

Clerk's Fees—	Receiving claim, &c.....	\$0 10	Sec. 186, p.
	Issuing Special Summons.....	0 25	98; Sec. 22,
	Copies of Process and Claim.....	0 20	p. 292; and
	Affidavit of Service and Oath.....	0 20	Rule 164.
	Entering Bailiff's Return.....	0 05	
	Notice of Admission.....	0 10	
	Entering Final Judgment.....	0 25	
	Postages.....	0 05	
Bailiff's Fees—	Service of Summons.....	0 10	
	Attending to make return & proving.....	0 10	
Fee Fund, entering, &c., 10c. hearing and order,	30c.	0 40	

6th Oct., 18 — Taxed costs at..... \$1 80

X. Y., Clerk.

UPON CLAIM FOR SAY \$60, DEFENDED, TRIED AND JUDGMENT
ENTERED.

Clerk's Fees—	Receiving claim, &c.....	\$0 10	
	Issuing Special Summons, &c.....	0 35	
	Copy of Process and Claim.....	0 30	
	Affidavit of Service and Oath.....	0 20	
	Entering Bailiff's Return.....	0 05	
	Summons to Witness, 10c.; 2 copies		
	10c.....	0 20	
	Entering Notice of Defence.....	0 15	
	Notice to Plaintiff, and postage.....	0 15	
	Entering Judgment.....	0 25	
Bailiff's Fees—	Service of Summons, 20c.; mileage		
	20c.	0 40	
	Attending to Return and Proof.....	0 10	
	Service Summons on Witnesses	0 20	
	Mileage	0 50	
	Duties at Trial.....	0 05	
Fee Fund—	Entering, &c.....	0 40	
	Hearing and Order.....	1 30	

Allowed Witnesses..... \$4 70
2 00

Oct. 18.—Taxed costs at..... \$6 70

X. Y., Clerk.

Sec. 41, p.
16; Rule 83.

(115.) CLERK'S RETURN OF EMOLUMENTS.

RETURN of X—Y—, Clerk of the Division Court in the County of , of all fees and emoluments from first day of to the day of 18 , both days inclusive, made in pursuance of the Upper Canada Division Courts Act, section 41.

ON WHAT.	NO.	RATE.	AM'T.
Receiving claim, numbering and entering in Procedure Book		\$ cts.	\$ cts.
Issuing Summons, with necessary notices thereon or Judgment Summons.....	Not exceeding \$20. Exceeding... \$20. \$60.	0 10 0 20 0 30 0 40	
(For "Special Summons," with warnings subjoined. Summons in Replevin or Interpleader, or under the Garnishee clause, 5 cents extra..	0 05	
Copy of process or claim or set-off, or other paper required for service or transmission to Judge, each...	Not exceeding \$20. Exceeding... \$20. \$60.	0 10 0 15 0 20	
(Where the claim or set-off exceeds 3 folios of 100 words in length, for every additional folio 5 cents, if allowed by the Judge).....	0 10	
Summons to Witnesses, with any number of names therein.....	0 10	
For every copy to serve.....	0 05	
Drawing every necessary affidavit and administering oath.....	0 20	
(When exceeding 2 folios in length, 5 cents for every additional folio, if allowed by the Judge.) Entering Bailiff's Return to Process, or Judge's Order.....	0 05	
Entering notice of set-off, plea of payment or other defence requiring notice to the Plaintiff or notice of admission as to claim.....	0 15 0 10	
Taking confession of Judgment.....	0 10	
Every notice required to be given by Clerk to any party to a cause or proceeding, or to the Judge, in respect to the same and mailing.....	0 25	
Entering every Judgment, or order made at the hearing, or final order made by the Judge, or final Judgment entered by Clerk.....	0 25	
Summons for each Juryman, when called by the parties.....	0 10	
Returning Judge's Jury.....	0 25	
Order of Reference, Attaching Order, or other order drawn and entered by Clerk.....	0 15	
Transcript of Judgment (under Sec. 139 or 142).....	0 25	
Every Writ of Execution, Warrant of Attachment or Warrant for arrest of delinquent.....	Not exceeding \$20. Exceeding... \$20. \$60.	0 30 0 40 0 50	
Every Bond when necessary, including Affidavit of Justification.....	0 50	
Necessary entries made in the debt attachment book in each case (in all).....	0 15	
Transmitting papers for service to another Division or to Judge, on application to him, including the necessary entries but not including postages.....	0 20	
Receiving papers from another Division for service, entering the same, handing to the Bailiff, receiving his return and transmitting the same.....	0 30	
Searches.....	0 10	

I, X. Y., above named, make oath and say, that the foregoing Return contains a full and correct statement, in every particular, to the best of my knowledge and belief, of the fees and emoluments of my office, received or receivable on business done during the period above mentioned.

X— Y—

Clark

Sworn before me at , in the county of , this day of , 18 .

(116.) LIST OF UNCLAIMED MONEY, VERIFIED.

List of unclaimed moneys paid into Court, or to me as Clerk thereof, which remain unclaimed for six years ending on the 31st day of December last past. Sec. 43, p. 17; Rule 84.

For whom or on whose account money paid.	When paid.	Style and No. of Suit.	Amount. \$ cts.

I, X. Y., Clerk of the Division Court in the county of make oath and say that *the foregoing return is full and correct in every particular,* (or if no moneys remain unclaimed, instead of the matter between the asterisks say, "no such moneys paid into Court, or to me as Clerk thereof, remain unclaimed for six years next before 31st day of December last past.")

Sworn, etc.

X—Y—, Clerk

BAILIFF'S FORMS.

(117.) REPLEVIN BOND.

Sec. 8, p.
204; Rule 46

Know all men by these presents, that we, A. B., of &c., W. B., of &c., and J. S., of &c., are jointly and severally held and bound to V. W., Bailiff of the Division Court, in the County of , in the sum of \$, to be paid to the said Bailiff, or his certain attorney, executors, administrators or assigns, for which payment to be well and truly made we bind ourselves, and each and every of us in the whole our and each, and every of our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated this day of , A.D., 18 .

The condition of this obligation is such, that if the above bounden A. B do prosecute his suit with effect, and without delay against C. D. for the taking and unjustly detaining (or unjustly detaining, as the case may be) of his cattle, goods and chattels, to wit: (here set forth the property distrained, taken or detained), and do make a return of the said property, if a return thereof shall be adjudged, and also do pay such damages as the said C. D. shall sustain by the issuing of the writ of replevin, if the said A. B. fails to recover judgment in the suit: and further, do observe, keep and perform, all orders made by the Court in the suit; then this obligation shall be void, or else remain in full force and effect.

Signed, sealed and delivered }
in presence of

A. B. [L.S.]
W. G. [L.S.]
J. S. [L.S.]

(118.) FORM OF ASSIGNMENT TO BE ENDORSED, IF REQUIRED.

Sec. 8, p. 204
and note (J).

Know all men by these presents, that I, V. W., Bailiff of the Division Court for the County of , have, at the request of the within named C. D. (the Defendant), assigned over this replevin bond unto the said C. D. pursuant to the Statute in such case made and provided.

In witness whereof I have hereunto set my hand and seal of office this day of , 18 .

Signed, sealed and delivered }
in presence of

V. W. [Seal.]

(119.) BAILIFF'S RETURN TO WRIT OF REPLEVIN.

In the — Division Court in the County of —.

BETWEEN A — B —, Plaintiff,

AND

C — D —, Defendant.

In pursuance of sec. 11 of 22 Vic. cap. 20, and sec. 5 of 23 Vic. cap. 45, I have taken from said Plaintiff a bond, conditioned as by said acts required, made by him and two sureties, namely of the of in the County of , yeoman (or as the case may be), or, of the same place, (or as the case may be), which bond bears date the day of , 18 , and is witnessed by

And by virtue of the annexed writ to me directed, I have seized and delivered to the Plaintiff the goods mentioned in said writ, that is to say (describing the goods by number, quantity and quality, or if only a part have been replevied say, a portion of goods in writ mentioned, that is to say (describing them), and I cannot make replevin of the residue of said goods, namely (shortly describing them), as by said writ commanded by reason of the same having been eloigned out of this country by the Defendant (or as the case may be).

(120.) INVENTORY OF GOODS SEIZED OR REPLEVIED.

An Inventory of property and effects by me, this day seized (or replevied) in the Township of , by virtue of a writ of (as the case may be) issued by A. B., Clerk of the Division Court of the County of (or as the case may be) on behalf of E. F. against C. D.: that is to say, one lumber wagon, etc. (stating all the articles seized).

Dated this day of , A.D. 18 .

V — W —,
Bailiff, etc.

(121.) APPRAISER'S OATH ON ATTACHMENT CASES.

You, and each of you, shall well and truly appraise the property and effects mentioned in this inventory (holding it in his hand) according to the best of your judgment. So help you God.

Sec. 201, p. 101 note (c).

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[L.S.]
[L.S.]
[L.S.]

b, IF

V. W.,
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[Seal.]

(122.) APPRAISEMENT TO BE ENDORSED ON INVENTORY.

Sec. 201, p. 101, note (j). We, B. B. and B. D., being duly sworn by the Bailiff, V. W., to appraise the property and effects mentioned in the within inventory, to the best of our judgment, and having examined the same, do appraise the same at the sum of \$

Witness our hands this day of A.D. 18 .

B. B.
B. D.

(123.) NOTICE OF SALE.

Secs. 155, 156, pp. 76, 77, notes (e), (g). By virtue of an execution issued out of the Division Court for the County of , and to me directed, against the goods and chattels of , at the suit of , I have seized and taken in execution, one bay horse, &c.

All which property will be sold by public auction, at on the day of , 18 , at the hour of o'clock in the noon.

V. W., Bailiff.

Dated day of A.D. 18 .

(124.) RETURNS TO EXECUTIONS, &c.

Secs. 185 et seq., pp. 64 et seq. and notes. (a.) *Nulla bona.*—The within Defendant (or Plaintiff) hath no goods or chattels in the said County of , whereof I can make the moneys to be levied as within commanded.

V. W., Bailiff

Dated day of A.D. 18 .

(b.) *Feci.*—By virtue of the within execution, I have made of the goods and chattels of the Defendant (or Plaintiff) the moneys within mentioned and have paid the same to the said clerk as within commanded.

V. W., Bailiff.

Dated day of A.D. 18 .

(c.) *Part made.*—By virtue of the within execution, I have made of the goods and chattels of the Defendant (or Plaintiff) \$, and have paid the same to the said Clerk, and the Defendant (or Plaintiff) hath no more goods or chattels in the said County of , whereof

I can make the residue of the said moneys, or part thereof.

V. W., Bailiff.

Dated day A.D. 18

WHEN RENT LEVIED BY BAILIFF.

(d.) By virtue of the within execution, I have made of the goods and chattels of the Plaintiff (or Defendant) \$ part whereof, \$, I have paid to O. B., landlord of said Plaintiff (or Defendant) for one quarter's rent in respect of premises when levy made; and a further part \$, I have retained as fees on execution. The residue \$, I have paid to the said Clerk as within commanded.

V. W., Bailiff.

Dated day of A.D. 18

(125.) BOND ON SEIZURE OR SALE OF PERISHABLE PROPERTY.

In the — Division Court in the County of —.

BETWEEN A — B —, Plaintiff,

AND

C — D —, Defendant.

Know all men by these Presents, that we, A. B., of (insert place of residence and addition) the above named Plaintiff, E. F., of &c., and G. H. of &c. are, and each of us is, jointly and severally held and firmly bound to C. D., the above named Defendant, in the sum of \$ to be paid to the Defendant, his certain attorney, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, and each, and every of us, binds himself, his heirs, executors and administrators firmly by these Presents.

Sec. 115, pp. 108, 109

Sealed with our respective seals, and dated this day of , A.D. 18

Whereas the above named Plaintiff hath sued out of the said Court (or from a Justice of the Peace) a Warrant of Attachment against the goods and chattels of the Defendant, and hath requested that certain perishable property, to wit (specify property) belonging to the Defendant, may be seized, and forthwith exposed and sold, under and by virtue of the said

Warrant of Attachment, [or whereas certain perishable property, to wit . . ., belonging to the Defendant, hath been seized under and by virtue of a Warrant of Attachment, issued out of the said Court (or by a Justice of the Peace) in the above named cause, and hath been duly appraised and valued at the sum of \$. . . and is now in the hands of the Clerk of the said Court; and whereas the Plaintiff hath requested the said Clerk to expose and sell the said goods and chattels as perishable property] according to the form of the Statute in that behalf.

Now the condition of this obligation is such, that if the said Plaintiff, his heirs, executors or administrators, do repay to the said Defendant, his executors, or administrators, the value of the said goods and chattels, together with all costs and damages, that may be incurred in consequence of the seizure and sale thereof, in case judgment be not obtained by the Plaintiff, according to the true intent of the 214th Section of the Division Courts Act: Then this obligation to be void —else to remain in full force and virtue.

Sealed and delivered } in presence of }	A. B. [L.S.]
	E. F. [L.S.]
	G. H. [L.S.]

Form 111,
p. 430.

N.B.—Add *Affidavit of Justification as in Form No. 111.*

erishable defendant, arrant of (or by a use, and sum of \$ Court; aid Clerk as perish- statute in

that if Administrators, or admin- chattels, may be thereof. Plaintiff, on of the be void

L.S.
L.S.
L.S.

Form

(126.) FORM OF BAILIFF'S RETURN.

N.B.—This Form is to be used in making returns under the 3rd General Rule, which rule is to be read and understood in connexion with the provisions of the Division Courts Act, touching the execution and return of Writs of Executions, and with Rule 94. As the return is made and sworn to every Court day, the dates are to be filled in as noted, viz.:—(a) the day next before the last Court day; (b) the day on which return made; and note further—(c) In this column is to be set down the particular return made, with any other information necessary to show the due and faithful discharge of duty by the Bailiff in respect to each case.

Rule 93. RETURN OR V—W—, Bailiff of the Division Court in the County of _____, made in pursuance of the Rules of Practice touching all Warrants, Precepts and Writs of Execution, acted on or in hand, Between the (a) day of _____, A.D. 18_____, and the (b) day of _____, A.D. 18_____. V—W—, Bailiff.

Number.	Style of Cause.	When Writ of <i>Fieri Facias</i> received. (c)	Amount to be levied.	Amount levied.	When levied.	Amount of Bailiff's charges.	Amount paid to Clerk.	When paid.	Remarks. (d)
			cts.	cts.	A.D. 18	cts.	cts.	A.D. 18	

I, V—W—, above named, make oath and say, that the foregoing Return is full, true and correct in every particular.
Sworn before me at _____ in the County of _____, this _____ day of _____, A.D. 18_____. X—Y—, Clerk.

N.B.—The foregoing Return will serve as a guide for the form and mode of ruling the "Bailiff's Process Book."

Rule 92.

Dated 1st July, 1869.

JAS. ROBT. GOWAN.
S. J. JONES.
D. J. HUGHES.
JAMES DANIELL.
JAS. SMITH.

Approved.

Wm. B. RICHARDS, C. J.
JOHN H. HAGARTY, C. J. C. P.
ADAM WILSON, J.
JOHN W. Gwynne, J.
THOMAS GALT, J.

GOWAN.
S.
HES.
HELL.

I N D E X.

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